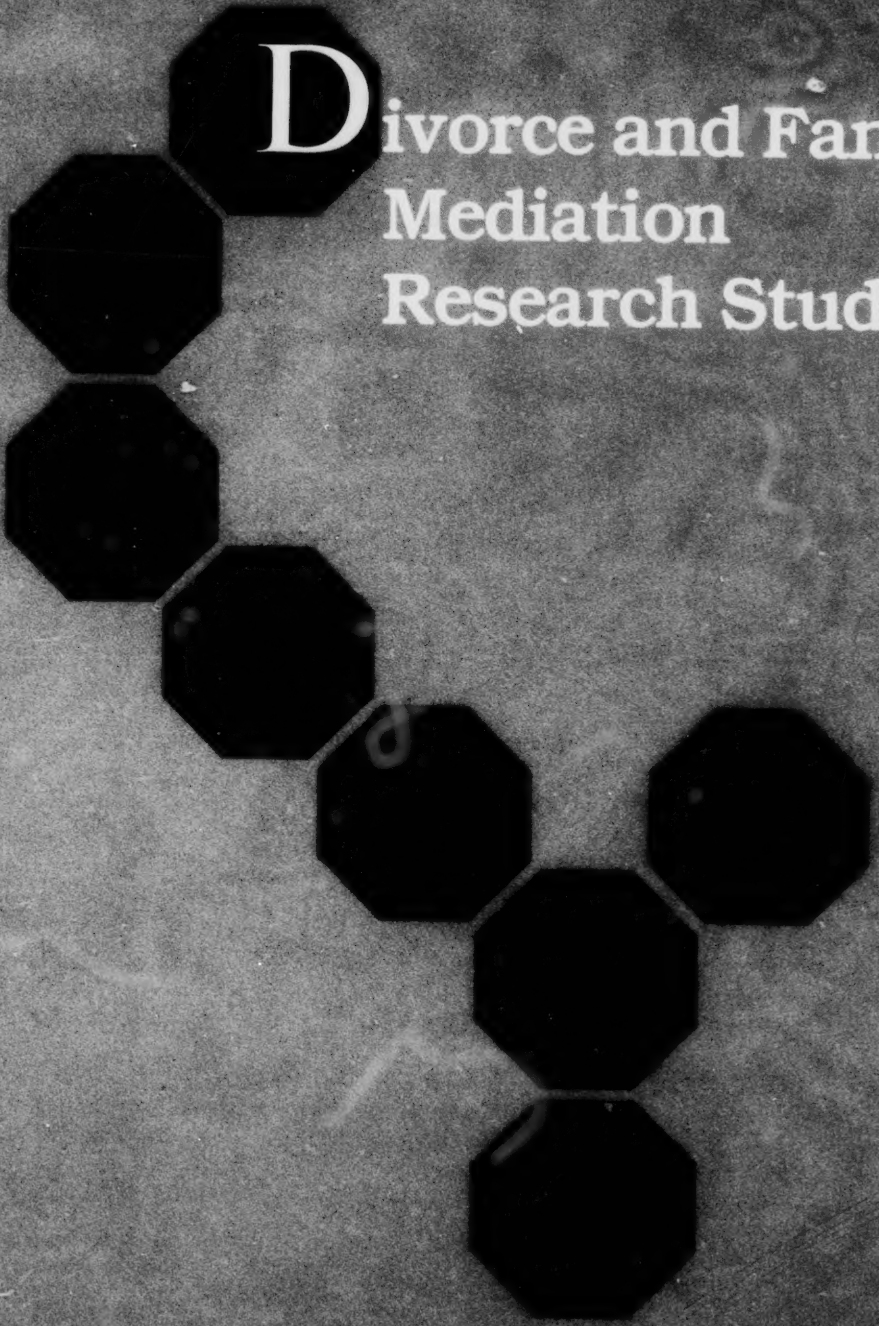

Divorce and Family Mediation Research Study:

Winnipeg

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Canada

Family Law Research

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DIVORCE AND FAMILY MEDIATION RESEARCH STUDY:

WINNIPEG

February 16, 1988

A REPORT PREPARED FOR:
THE DEPARTMENT OF JUSTICE CANADA

Submitted by:

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May 1987

EXECUTIVE SUMMARY

DIVORCE AND FAMILY MEDIATION STUDY - WINNIPEG

Background

This report assesses the impact of a particular model of family mediation, specifically the system of "automatic" referral for mediation of cases in the Winnipeg Unified family Court.

The report is part of a larger study of family mediation models conducted by the Department of Justice in four different court based mediation services: The Unified Family Court of St. John's Newfoundland; the Unified Family Court of Saskatoon; the Superior Court of Montreal; and the Manitoba Court of Queen's Bench (Family Division).

The purpose of this study, as well as that of the larger study, was to assess the overall effectiveness of family mediation and the relative impact of different "mediation models", but not to do an effectiveness evaluation of a particular court service.[1]

The Department of Justice Canada's interest in family mediation stems from its responsibility for the Divorce Act, and the mediation provisions contained therein. These provisions form the beginnings of a federal mediation policy. However, little empirical research has been done on the effectiveness of family mediation, and most of it has been done in the United States. Therefore, the underlying rationale for this research was to collect empirical information that would permit the development of federal mediation policy based on Canadian realities.

---

[1] Albeit, differentiation between the program and the model becomes clouded at times. That is, it is difficult to separate features inherent in the model from those characterized as service idiosyncracies. There is a fine line between evaluating performance of a model and that of particular service. The more specific a topic is defined and assessed, the more particular that topic may be to the service rather than a model. Any one model might work differently if transported to a different environment. Some topics presented in this report may be seen as peculiar to the Winnipeg situation. Yet, if the topics are not presented a certain deception is perpetrated on policy analysts, planners, program administrators and service providers in other jurisdictions as well as those in Manitoba. Thus, some findings verge on service performance assessment but are nevertheless presented because of their relationship to the model.

The Winnipeg court-based mediation service was invited to take part in this national study for a number of reasons: It was a well-established service at the time of the study and, therefore, had overcome any (some of the) "growing pains it might have had when first established; it is well known for the quality of its mediation services; it has a unified jurisdiction in family law matters which permits the study of separation as well as divorce cases; and, the service has a unique "automatic" referral system which makes it a very interesting subject for a study on different family mediation models.

The Winnipeg service, or "Family Conciliation Services" (FCS) as it is called, is a program of the Community Services Ministry of the Provincial Government. When the research project began it was staffed with nine mental health workers and a Director who was a trained social worker.

FCS provides four services: Counselling (assisting couples and individuals adjust to the problems of family breakdown); assessments (court-ordered reports prepared primarily to assist judges to arrive at decisions on custody, access and child welfare matters in contentious cases); information and referrals; and mediation (the process by which couples, with the assistance of a trained mediator, attempt to settle issues in dispute). The mediation service extends to custody and access issues. Under its mandate, FCS does not mediate financial issues such as property division and child or spousal support. FCS conducts what has been termed as "closed mediation" as opposed to "open mediation". In closed mediation negotiations remain confidential throughout.

Research Methodology

The study is comparative and longitudinal in nature. In planning the research the Department of Justice Canada decided to measure the effectiveness of different mediation models against another dispute resolution mechanism - the "adversarial approach" where lawyers settle issues in dispute. As well, it was decided to study the impacts of these two approaches over the short to medium term in order to determine whether impacts change over time. Various measures of impact and the relationship of "client characteristics" to outcome are common features of the four research projects.

The research questions can be divided into four major headings: process questions (how does the service operate?); outcome questions (indicators of the specific results of the service, for example percentage of agreements concluded); social impact (effects on broad social concerns such as the rights of women); and baseline data questions (gathering of basic statistics).

Special attention was given to the various players involved in the system (i.e. judges, mediators, lawyers, and clients). Since each of these groups has the potential of creating and influencing the resulting system, their perceptions were given careful attention.

The empirical data were collected from a number of sources: file searches; management statistics; questionnaires; and interviews. Two client questionnaires were used. One was completed by 282 individuals referred for mediation and intercepted by the researchers while awaiting their first mediation session at FCS. A second questionnaire was completed by 67 individuals from the original 282 at the completion of mediation. This last questionnaire was eliminated from the analysis due to the low response rate and large percentage of missing data. The questionnaires were followed-up by a telephone interview four months after the completion of mediation. Interviews were successfully conducted with 138 of the original 282 FCS clients who completed the questionnaire at mediation intake. As well, judges, lawyers and mediators were interviewed. In person interviews were conducted with all the Justices of the Manitoba Court of Queen's Bench (Family Division), and the FCS Director and six FCS staff counsellors. Telephone interviews were conducted with 42 Winnipeg family law practitioners.

We have identified two particular design issues affecting the conclusiveness of the research findings. The first is the difficulty in isolating the impact of mediation given the great number of major changes that have recently taken place in Winnipeg and in Manitoba in the law, the rules of court procedure, the jurisdiction of courts, and court personnel. The second problem is more fundamental in nature. We question the assumption inherent in the terms of reference that mediation is one branch of a dichotomy with a monolithic "adversarial system" as the alternative route. Methods of family dispute resolution are best conceived as a continuum. However, this study incorporates, in some degree and with some reluctance and qualification, the dichotomous conception common to most empirical studies of family mediation.

Findings

The overall conclusions to be drawn from the findings are that mediation had no demonstrable effect on the outcomes or the final settlements of family dispute matters, but did result in many separating couples reaching full or partial custody and access agreements and attracted a high degree of satisfaction from judges, lawyers and program participants.

A summary of the major findings is listed below:

- judges, and lawyers have a favourable perception of mediation;
- the system of "automatic referral" is generally regarded favourably;
- two role types emerge for lawyers: An "active" role where lawyers conduct themselves in keeping with the conception of mediation as an integral component of the family litigation system; and an "observer" role where mediation is conceived as a dichotomous alternative to the family legal system. Most lawyers adopt the latter role.
- the most frequently mentioned reason for attending mediation is the "benefit to the children";
- court-referred clients are more likely than others to think that they are legally compelled to attend mediation;
- most clients stated that they felt in no way pressured by mediators;
- about 14 percent of the clients did not attend mediation after their first session;
- next to discontinuation of mediation by reason of reaching an agreement, the most frequent reason for termination is that the other parent refused to participate;
- between 9 and 13 of every 20 FCS mediation cases result in full or partial agreement;
- most cases are settled in 3 to 5 sessions. Beyond this point there are sharply diminishing returns;
- on general evaluation items interview respondents are complimentary of mediators and the mediation process;
- four months after their mediation file has been closed clients state that they felt more "relieved", "content" but also more "angry" than at the beginning of the mediation process;
- mediation is most frequently seen as contributing to the resolution of access issues;

- clients indicate that mediation contributes to an appreciation and understanding of the family legal system more than it does to communication and understanding between parents;

- there is no relationship found between maintenance compliance and mediated agreements. The Manitoba Maintenance Enforcement Program may be the most significant factor in compelling compliance;

- there is no difference between mediating and non-mediating peoples' prospects of relitigation and mediation participation or outcome;

- none of the indirect measures of the impact of mediation on the "best interest of the children" produced a pattern of difference between those who conclude a mediated agreement and those who do not;

- the data do not support the criticism by some that mediation is more likely (rightly or wrongly) to result in a joint custody order;

- there is no indication that either mothers or fathers are more likely to gain custody by participating in mediation.

In the results we are struck with an apparent contradiction: While our data do not substantiate many of the usual claims made for the impacts of mediation, or the major criticisms of mediation, most of the people directly affected by it such as clients, judges, mediators, and lawyers are very pleased with the system. There are several ways we might interpret this result.

First, mediation, within the context of the family legal system, may be likened to a weak star in the galaxy. To see the star one must have a telescope of sufficient strength. It may be that mediation has influence, but that the research design we have used is not sufficiently refined to uncover its effects. If it is the case that mediation's benefits are present but not dramatic, then persons such as lawyers, judges, counsellors and mediation clients -- being closer to the subject -- are aware of effects that our research has not picked up. The positive impacts identified in the mediation studies conducted in some of the other court sites give credence to this explanation.

A second way of explaining this contradiction would be to conclude that mediation does not have positive effects and that a more powerful research design would not change the result. If one were to accept such a premise then one would have to conclude that the judges, lawyers, counsellors and clients who believe that mediation "works" base their apprehension of results on faith alone. However, we reject this explanation since it would be presumptuous to conclude on the basis of a relatively inconclusive set of data that such is the case.

Another possibility is that all of the positive claims made for mediation are, in a sense, irrelevant. The justification for family mediation comes not in its "technical effectiveness" but in the process itself. Family court judges would prefer to be decision-makers of last resort. Mediation is valuable in that it provides a reassurance that every effort has been made to reach a settlement whether or not such efforts have empirically demonstrable technical effectiveness.

Similarly, family lawyers are concerned by their clients' emotional trauma and their own inability and that of the legal system to relieve the hostility and fear. If mediation gives the parties a forum to be heard by a neutral third party and to vent some of their hostility and anxiety, then mediation allows lawyers greater freedom to play their traditional professional role. Clients are generally satisfied with mediation since they are returned to a pivotal role in the dispute settlement process: They become agents in their cause. The feeling that they are victims of the dispute settlement process is diminished.

In sum, it appears that the basic attractiveness comes from what mediation as a process can do for people in their roles as judges, lawyers, or parties to a dispute. As Davis concluded in 1983, (Davis, G., "Conciliation and the Professionals", Family Law, vol. 13, 1983, p. 6-13):

> "Conciliation [mediation] was not a panacea for social conflict. Nor was it the death knell of the legal systems or the legal profession. Instead, it apparently provided a useful, if not wholly satisfactory, channel of legal relief". (page 7)

Common sense dictates that the method ought to work as predicted. In the absence of evidence of a negative impact (and perhaps even then) mediation will likely maintain its attractiveness. We suggest that this interpretation is consistent with our findings and may well be applied to much of the existing literature on mediation.

I. INTRODUCTION AND BACKGROUND

DIVORCE AND FAMILY MEDIATION STUDY - WINNIPEG

Family conciliation is gaining increasing acceptability as a means of settling specific issues inherent in family dissolution.

This report presents an analysis and discussion of conciliation as practiced in Winnipeg through the Family Conciliation Services (FCS) program. Readers should bear in mind three important characteristics of this program: (a) FCS mediates only custody and access issues; (b) virtually all parties who disagree on custody and access are referred to FCS; and (c) FCS is obliged to accept mediation referrals from all sources (judges, master, lawyer, or self). While well entrenched in the family court system today, FCS was initiated but approximately eighteen months prior to the start of this research. Shortly after the study began a new director was hired. These and other factors, including a significant shift in the focus and content of services, as well as the revision of accountability systems, imply that FCS had not fully emerged from its developmental phase when the research started. Indeed, some program elements are still undergoing development as the research winds down. Yet, the fundamental elements of the program have not been the subject of intended modification during the course of the research. Everyone concerned appears to be content with the referral procedure, mediation service and relationship with the court. In order to put this research study into context it is necessary to consider the recent history of the family legal system in Winnipeg and in the province of Manitoba.

BACKGROUND

In 1974 the Law Reform Commission concluded that conventional approaches to family law, involving courts with concurrent jurisdiction, create confusion and frustration among litigants. Such courts tend also to be expensive and inconsistent in their legal solutions (Law Reform Commission, 1974). The Unified Family Court was proposed by the Commission as an alternative.

Following the Law Reform Commission's recommendation unified courts were established in four sites as demonstration projects. Evaluations of the experimental courts indicated that unification provides a rational solution to some of the problems identified by the Commission.

Among other things, evaluations of the experimental unified courts indicated that intake and counselling services attached to the court can mitigate some of the effects of the conventional approach and it was suggested that more amicable settlements of contested domestic matters were more frequently the result. The evaluations suggested that the unified family courts did not operate so as to keep families intact. Rather they directed their focus toward "conciliation" (adjusting to the breakup) rather than reconciliation (preserving the marriage). By the time unified family courts were established a consensus appears to have developed among those with a role to play in the family law system that once a couple has reached the point of contact with the courts reconciliation counselling is often too late. Conciliation counselling is desirable.

In 1982 Mr. Justice Carr (as he is now) prepared a report for the Attorney General of Manitoba which, among other changes, recommended the establishment of a unified family court for the Eastern Judicial District of Manitoba to have exclusive jurisdiction in family matters. This superior court was to replace the overlapping jurisdictions of the Provincial Court (Family Division), the County Court (since then amalgamated with the Court of Queen's Bench), and the Manitoba Court of Queen's Bench ("QB").

In October of 1983, in preparation for more sweeping changes, the Family Division of the Court of Queen's Bench was established headed by an Associate Chief Justice. By July of 1984 the Family Division was fully staffed and operational under a revised set of Court Rules. The Family Division since that time has included the Associate Chief Justice, five puisne Justices, and one Master. From time to time Justices other than those of the Family Division assist in the work of the Family Division.

With the amalgamation of the Court of Queen's Bench and the County Court the administrative "Judicial Districts" in Manitoba were eliminated. The jurisdiction of the QB Family Division encompasses the greater part of the former Eastern Judicial District, however, including the administrative centres of Winnipeg, St. Boniface, and Selkirk. (The area served by the unified court includes about 75% of Manitoba's population, although the geographic area as a proportion of the total area of the province is much less.) In areas outside of these administrative centres, but within the area originally encompassed by the Eastern Judicial District, either the QB Family Division or the Provincial Court can hear most applications based on provincial family statutes. Matters such as divorce and corollary relief based on a petition for divorce, the division of marital property, and adoption must be dealt with in the Court of Queen's Bench (Family Division). In the area of the province outside of the old Eastern Judicial District the rules and procedures that existed before the establishment of the unified court still apply. In those areas the general QB has concurrent jurisdiction with the Provincial Court in matters that fall within the jurisdiction of the Provincial Court. The general QB has exclusive jurisdiction in divorce and matters arising from petitions for divorce, the division of marital property and adoption.

Prior to the institution of the QB Family Division the Provincial Court (Family Division) had attached to it a social work unit serving a variety of counselling purposes including marriage counselling. The workers in this unit served as the core for the establishment of a counselling service attached to the new unified family court. As indicated in the Introduction to this background information, the new unit is called "Family Conciliation Services" ("FCS").

FCS is a program of the Community Services ministry of the Provincial Government. It presently includes nine mental health professionals and a director who is a trained social worker. Seven workers and the director were present through all of the data-gathering period.

The counsellors in the Family Conciliation unit are identified in the Queen's Bench Rules (rules of Court having legislative effect) as "conciliation officers" (Rule 826). Albeit their official designation is "conciliation officer", and the term conciliation as it is used in the social work unit denotes a process other than divorce and separation mediation, the pertinent rule sets out the court-based mediation process as follows:

> A conciliation officer may at the request of the parties or their solicitors, and shall upon a reference by a judge or master;
>
> (a) meet with the parties and, if they agree, attempt to mediate their dispute; and if the conciliation officer deems it appropriate,

> (b) meet with children and such other persons including solicitors as the conciliation officer deems necessary in the attempt to mediate the dispute.
>
> Upon the conclusion of mediation, send a report to the parties, or to their solicitors, if they are represented, indicating what, if any, agreements have been tentatively reached, and advise the court when conciliation efforts have been concluded, and whether all issues between the parties have been resolved.

Although the description in the Rule just cited is wide enough to include mediation of all issues, in fact the court-based counsellors are limited by policy to issues of custody and access.

Specifically, FCS classifies the services as follows:

> Counselling - assisting couples and individuals adjust to the problems of family breakdown, including the decision to separate and the problems of single parenting
>
> Assessments - court-ordered reports prepared primarily in order to assist judges in arriving at decisions on matters of custody and access as well as child welfare matters
>
> Information and Referrals - providing timely, practical information to persons involved or potentially involved in family law litigation and referral to sources of further information and/or service
>
> Mediation - the process by which couples, with the assistance of a trained mediator, attempt to settle issues of custody and access

The same counsellors who serve the court as mediators also serve as "Family Investigators" (pursuant to Rule 827) preparing and presenting Assessments to and on behalf of the court. As a matter of internal policy, however, the same individuals may not act as both "Conciliation Officer" and "Family Investigator" in the same case. In other words, the unit conducts only what has been termed "closed mediation" as opposed to "open mediation." In open mediation the same counsellor who acts as mediator may, if mediation does not result in agreement, become the family investigator reporting recommendations on custody and access to the court. Closed mediation, on the other hand, remains confidential throughout.

In addition to the court-based mediation service there is a growing number of alternative private services in Winnipeg. A number of Winnipeg lawyers have taken family (or general) mediation courses in Toronto or Vancouver and some of them have announced that they are available to conduct family mediation on a less restricted basis than the court-based service. A greater number of psychologists and social workers are including mediation in the range of services they offer the public. Recently an organization calling itself "Family Mediation Manitoba" has been founded to bring together professionals active and interested in mediation.

The foregoing background information indicates that the past three and a half years have seen some fundamental changes in the way in which family law cases are processed in Winnipeg. In addition to changes in the law (which have not been reviewed here), there is in place a new unified family court, the Manitoba County Court has been absorbed into the Court of Queen's Bench, a "specialist" court has been established and a conciliation unit assists clients in reaching out of court settlements or in narrowing issues where custody and access of their children are in dispute.

II. LITERATURE REVIEW

In March of 1985, about the time the present study began, Christine Wihak presented to Research and Statistics, Department of Justice Canada a REVIEW OF LITERATURE ON MEDIATION IN SEPARATION AND DIVORCE AND AN ANNOTATED BIBLIOGRAPHY OF MEDIATION LITERATURE. Her review of the literature to that date lead her to the following conclusions (p. iv):

1. Mediation is effective in bringing about pre-trial agreements on matters of custody and access.
2. Compliance rates are higher for individuals with mediated agreements.
3. Relitigation rates are lower for individuals who use mediation.
4. Mediation reduces the length of time required to obtain a final [judgment] in divorce proceedings.
5. Mediation reduces court and legal costs.
6. Mediation clients report a high degree of satisfaction with the process.

Wihak concluded on the basis of her analysis of the research conducted in various sites and available to her (mainly in the U.S.) that the effectiveness of mediation has been demonstrated.

Other observers of the same body of research have arrived at somewhat different conclusions. (See, for example, Statement of Robert J. Levy, Professor of Law, University of Minnesota, December 6, 1985 before the New York Assembly Standing Committee on Judiciary, and "Comment on the Pearson-Thoennes Study and on Mediation", FAMILY LAW QUARTERLY, 17, No. 4, 525, Winter 1984.)

These contrary observations can be itemized as follows:

1. The research is flawed because it posits a false dichotomy between mediation and "the adversarial system".
2. Very different administrative and legal contexts as well as other factors limit the extent to which results can be generalized.
3. To date, sample sizes are small and studies are of short duration.
4. Research has usually been conducted by mediation proponents, who without intending to do so, tend to influence findings and conclusions.

In addition to independent research reports and evaluations of research reports, both positive and negative, there is a significant body of literature that views mediation from a feminist perspective. (See, for example, Anne Bottomley, "What is Happening to Family Law? A Feminist Critique of Conciliation," in WOMEN IN LAW, Julia Brophy and Carol Smart (eds), London: Rutledge and Kegan Paul, 1985, 162.)

Feminist critics argue that the popularity of mediation may, in some respect, be the result of a backlash against the recent gains of women in family law reform. Mediation, it is argued, while seemingly attractive, is highly problematic for women in social and economic circumstances wherein their bargaining power is limited relative to men. Mediation represents a "privatization" of family dispute resolution rendered acceptable by benevolent images of child caring. However, as Bottomley argues, "The use of lawyers . . . may well serve women's interests better than regulation through a more informal welfarist approach" (at 164). Formal rights and public procedures may be advantageous to an "oppressed" minority.

Data reviewed in the preparation of this study do not substantiate claims made for the impact of mediation, or the major criticisms of mediation. The research results on the effects of mediation are, at the present time, informative but on several points inconclusive.

III. OBJECTIVES OF THE STUDY AND METHODOLOGY

TERMS OF REFERENCE

A fundamental statement of the tasks to be performed in the course of the present research grew out of a document prepared for the Department of Justice, Research and Statistics Branch, by Dr. C. James Richardson of the Department of Sociology, University of New Brunswick. The prior document was entitled A Proposal for an Evaluation of Reconciliation and Conciliation Services in Canada. (A condensation of Dr. Richardson's proposal was appended to a Request For Proposal (RFP) circulated in February of 1985.) The RFP sought proposals for research to be carried out in four separate Canadian family court sites across Canada: St. John's, Montreal, Winnipeg, and Saskatoon.

In each of the projects the same basic objectives were to be pursued. Each was to constitute a longitudinal study which would in some manner compare cases in which mediation was an element with those in which the "traditional adversarial approach" (sic) was followed. Cases were to be followed from "point of entry into the system" onward, examining the extent to which mediation (and related services) were involved, the effects of mediation including the effect in influencing settlement, and the impact upon court resources.

In addition, the RFP required that researchers examine the manner in which "client characteristics" relate to the outcome of mediation. Among other things the RFP anticipated a possible impact on relitigation and compliance with court orders for support and maintenance. Interviews were to be conducted with litigants to determine, among other things, satisfaction with outcome.

The researchers were to consider the feasibility of conducting direct observational studies of the mediation process and court proceedings.

An Appendix to the RFP contained a detailed listing of "Evaluation Questions". These questions, modified to account for design and conceptual problems and peculiarities confronted at the Winnipeg research site, form the basis for the research questions used in this study. A restatement of the Research questions appears below.

RESEARCH PROPOSAL

In March of 1985 Sloan & Greenaway Consultants submitted a proposal to conduct research at the Winnipeg site. The proposal identified a number of perceived and potential methodological and conceptual problems requiring resolution. Some alterations in the work plan as set forth in the RFP were proposed to be settled in the course of developing a detailed research design. Preliminary objection was taken to the conception (inherent in the Terms of Reference among other places) of family law dispute settlement alternatives as a "dichotomy": mediation constituting one exclusive pathway and the "adversarial approach" constituting the other.

The proposal also pointed out that isolating the impact of mediation is difficult because of the great number of changes that have recently taken place in Winnipeg and in Manitoba in the law, the rules of court procedure, the jurisdiction of courts, and court personnel. The difficulty in constructing a truly comparative rather than a descriptive study was identified at that stage and the problems in that regard prove not to have been understated.

The Research Proposal was the basis for the genesis of several drafts and a detailed final Research Design. The Research Design (in its several drafts as well as in its final form), subsequent design issues and data-gathering instruments were thoroughly discussed by a Research Advisory Committee. This Committee was comprised of Associate Chief Justice A. Hamilton of the Manitoba Court of Queen's Bench (Family Division), the Director of Family Conciliation Services, representatives from the Manitoba Ministries of Community Services and the Attorney General including staff from the Research and Planning Branches, and a representative from the Federal Department of Justice, Research and Statistics Branch. Committee members were helpful both individually and as a group in assisting the researchers in every phase of the study and in the preparation of this and preliminary reports. (We acknowledge with thanks the cooperation of all of the members of the Research Advisory Committee, but, at the same time, acknowledge that any errors or omissions in this report are the responsibility of Sloan & Greenaway Consultants and not the Research Advisory Committee.)

RESEARCH QUESTIONS

From the Terms of Reference, the Research Proposal and from the Research Design, the following questions were constructed. These questions therefore have guided all aspects of the research activities and they form the basis for this report.

A. Outcome Evaluation Questions

1. General Impact on Family Law Objectives

(a) Among the cases in the population where mediation has been available, what proportion of cases where court proceedings have been initiated are referred to Family Conciliation and what proportion actually participate in mediation?

(b) Of the cases dealt with by Family Conciliation, what proportion result in either total or partial agreement?

(c) Among the cases actually mediated by Family Conciliation (not just referred), what proportion result in reconciliation? (This is not a primary interest of this study since reconciliation is not an FCS service).

(d) As compared with cases in which no mediation occurs, do cases where couples actually mediate differ in their "contentiousness"?

2. Impact of Mediation on Court Process

(a) Is participation in mediation related to the number of contested court proceedings?

(b) Is participation in mediation related to the number of Consent Orders in Applications under The Family Maintenance Act?

(c) Is participation in mediation related to subsequent enforcement proceedings and specifically to the number of "show cause hearings" and applications for variation of maintenance and/or custody orders?

(d) Does mediation reduce court time and, by inference, costs?

(e) Is mediation related to the incidence of default on court-awarded maintenance orders?

3. Impact on Clients and Children

(a) How satisfied are litigants with the terms imposed upon them or upon which they settle?

(b) Does mediation act to reduce bitterness and hostility between the parties either immediately or in the long term?

(c) Do the access and custody arrangements either imposed by the court or settled upon by the parties turn out, in the estimation of the parties, to work out well?

(d) How satisfactory, in the estimation of the parties, are the arrangements imposed or settled upon been in terms of the best interests of the children?

(e) As a result of the custody and access arrangements imposed or settled upon by the parties, are the parents/litigants able to maintain a close relationship with their children, in the estimation of the parties?

(f) Are the custody and access arrangements actually carried out different from the arrangements legally imposed or agreed to? ...in what manner?

(g) Do the custody and access arrangements imposed by the courts differ in any respect from the arrangements agreed to by the parties in the course of mediation?

(h) Is there a bias in favour of joint custody on the part of mediation counsellors which operates to "pressure" clients to accept joint custody agreements?

(i) Do cases in which clients perceive mediation as being compulsory differ in outcome from cases in which clients do not perceive mediation as compulsory?

(j) Do clients who actually mediate believe that mediation should be mandatory?

(k) Is there a need for individual counselling to be administered as auxiliary to mediation?

B. Process Questions

1. Nature and Scope of Mediation

(a) What "types" of mediation/counselling are available from Family Conciliation?

(b) Are both reconciliation and counselling services available and how do they differ?

(c) What is the basis upon which mediation is terminated by court-based counsellors?

(d) Upon what basis is the decision made either to refer parties to mediation or to refrain from doing so?

(e) Are there benefits (measures of "success") accruing from mediation other than the conclusion of an agreement or partial agreement?

2. Types and Styles of Mediation

(a) What, if any, types of "non-adversarial" alternatives, other than court- based mediation, for the settlement of domestic disputes exist in the jurisdiction?

(b) If there are alternatives, how do they work in conjunction with court- based services?

(c) What approaches are used by Family Conciliation to orient new or potential clients to the services provided?

(d) In what ways do clients of Family Conciliation gain access to mediation?

(e) What services are offered by Family Conciliation?

3. Linkages with the "Legal Environment"

(a) What criteria are used in determining which cases are referred to Family Conciliation for mediation?

(b) In what manner does a referral to Family Conciliation for mediation influence the lawyer-client relationship?

(c) What interaction, if any, takes place between lawyers and counsellors in the course of mediation and what problems or obstacles exist to influence or impede such interaction?

4. Linkages with the Justice System

(a) At what stage in the course of court proceedings, and with what degree of frequency, do judges and other court officials refer family law cases to Family Conciliation and for what types of services?

(b) How many mediation cases are opened without prior referral by a judge or other court official?

(c) In what proportion of cases where custody and/or access are at issue is there a court-ordered "assessment" ... by Family Conciliation, ... by another person or agency?

(d) At what stage in the course of a domestic dispute are clients referred to, or do they initiate contact themselves, with Family Conciliation?

(e) Do Judges critically review and, in some instances, reject Consent Orders based on mediated agreements and do lawyers in some instances encourage clients to reject mediated agreements? ...on what basis?

C. Social Impact Questions

1. Preservation of Marriage and Family

(a) To what extent does the inclusion of court-based conciliation services, albeit that reconciliation is not included within the mandate of the Family Conciliation, encourage the reuniting of couples and families?

(b) What proportion of requests or referrals to Family Conciliation are specifically for reconciliation counselling?

(c) What are the views and/or biases of Family Conciliation counsellors regarding the necessity of making an attempt at reconciliation counselling before engaging in mediation?

(d) Do the views of individual counsellors have an effect upon the nature of the custody/access agreement, if any, concluded between the parties?

2. Status and Situation of Women

(a) Does the presence or absence of court-based mediation affect the nature of custody and access decisions?

(b) How is domestic violence treated in the counselling setting?

3. The Legal Profession

(a) In the opinion of experienced family law practitioners, what effect does mediation have in general upon the level of hostility between the parties and the tendency to settle rather than to rely upon the courts to impose terms?

(b) In the opinion of experienced family law practitioners, does mediation operate so as to better protect the best interests of children, work to the detriment of the best interests of children, or have no affect?

(c) What, if any, is the lawyer's role in the mediation process?

(d) Does mediation reduce legal fees by expediting case progress?

(e) Does referral to mediation relieve lawyers of their "unofficial counselling" responsibilities?

D. Maintenance and Custody Baseline Data -

(The following were to be gathered for each case referred for mediation where there has been a final or interim order of maintenance and/or custody in force within the data-gathering period. Where there has been more than one such order, reference will be made to the most current order.)

1. In what proportion of the cases where there has been a maintenance order has there been default...how many instances of default?
2. What has been the quantum of maintenance ordered by the court in final orders or decrees nisi? (NB to include both spousal maintenance and child support)
3. Was the quantum of maintenance ordered by agreement of the parties?
4. Under what legislation was an award of maintenance and/or child support, if any, made?
5. How many dependent children are subject in the proceedings?
6. What custody arrangements were ordered by the court?

Research questions are presented above as they were posed in the contractual mandate of this and the three other research sites (managed by another researcher). In the text of this report, the issues are organized according to the different key actors. This organization of material proved to reduce redundance and to be consistent with the conceptual framework which evolved through the study.

DESIGN PROBLEMS

The greatest problem to face the researchers was that of developing some sort of comparative data, preferably of a relatively objective nature. Outlined previously in this study is the background of recent changes in the family law system in Winnipeg and in Manitoba. Many changes occurred within a short period of time. With whatever comparisons one could make one could never be confident that the resulting differences could be attributed to the impact of the introduction of systematic referral of disputed domestic cases for mediation. Therefore, a reconstructed "before and after" measure appeared to be of little use.

Added to the difficulties stated in the previous paragraph, a preliminary analysis of court files (confirmed later upon more extensive examination) indicated that virtually 100% of the cases in the Winnipeg unified court where custody and/or access are at issue are, sooner or later, referred for mediation. This rules out any comparison of "referred" and "unreferred" cases. The use of a comparison site (e.g. Brandon) was similarly ruled out since no suitable comparable site could be identified.

Some lesser problems were also confronted. For example, we discovered that it was not possible without an overcommitment of resources to use data collected by the Maintenance Enforcement Branch to ascertain compliance with support and maintenance orders. In any event, Manitoba has a rather unique enforcement system in Canada and we found that obtaining compliance information was more accurately and expeditiously accomplished through client interviews than reviewing official records.

In a more general sense, we confronted a myriad of problems which can only be said to have been generated by the inherent complexity of the family legal system and by the inevitability of taking data constructed for one purpose (fair and rational disposition and administration of legal disputes) and making it do for another -- in this case, system analysis. At the intersection of social science and the law the currents are indeed and in many ways tumultuous.

SOURCES OF DATA

The basic units of analysis for this study are individuals involved in disputes over the terms and conditions of custody of and access to their children. Alternatively a "case" could be defined as a couple engaged in such a dispute. In many ways the latter makes more sense: it takes at least two parties to create a dispute and it takes at least two and often more to settle it. However, the logic of defining a case as a couple was outweighed by data management issues and the conceptual position that the views of effected individuals are more relevant than the views of a couple. Determining characteristics of couples and the view of a couple were practically difficult and conceptually cumbersome. Indeed, individuals are the focus of conciliation and the primary units of analysis of the research.

More objective data, such as maintenance quantum, are limited. Several factors influenced selection of the case study design and data source and data elements included. Efforts to construct a comparative design were unsuccessful due to factors present in the Winnipeg and Manitoba family law system. Efforts to construct a methodology least susceptible to alternative explanations of findings relied more on using multiple data sources than on imposing a design capable of controlling external factors. One design element constructed to support comparisons of custody and access agreements was incorporated into the methodology. Divorce cases disposed of by Court of Queen's Bench - Family Division, in the year preceding court unification were reviewed. Even this approach proved to be very limited since the types of cases and a multitude of individual and case specific variables potentially influencing outcomes could not be controlled. To the extent comparisons were made, they were highly non-equivalent.

The methodology supports analysis of most of the questions posed earlier in this section. Still unanswered is the question of whether or not the processes of FCS and outcomes are an improvement over the traditional lawyer dependent approach. Our data indicate general satisfaction with the FCS service but we have no comparable data for a lawyer dependent group who may or may not be equally satisfied. Our own keen awareness of the methodological limitations of the study has promoted a rather conservative interpretation of findings.

Most of the research questions require descriptive data. Comparisons are needed to address some of the research questions. Due to the mandatory referral to FCS, comparisons were limited to referred cases. One issue arising from the methodological limitation imposed is an analysis of individuals who will not participate in conciliation even when referred by their lawyer or the court.

The data for this study have been taken from the following eight sources:

1. Clients of FCS were a primary data source. The original research strategy was to obtain the measurements on the various questions at three points in time. A self-administered questionnaire was to be completed by all people referred to FCS office prior to their first counselling session. This was the pretest providing indications of attitudes, issues and other basic information before intervention (e.g. FCS conciliation counselling). A second self-administered questionnaire was to be completed by all clients immediately following completion of the service. Again, this was to occur at the FCS office. The third measurement was to be a telephone interview conducted four (4) months after completion of FCS service. This approach suffered substantial attrition. Of the initial 282

referrals attending FCS and completing the first questionnaire, only 67 completed the second questionnaire. This loss of respondents was primarily due to: (1) Clients not being sure service was completed; (2) clients being too emotionally upset to complete a questionnaire; and (3) clients not wishing to sit in the same room with the other party and complete a questionnaire. A lesser attrition was experienced in the third measurement of the interview. Of the original 282 the interview was completed with 138 clients. Reasons for attrition at this point were: (a) unable to locate respondents; and (b) unwillingness of three clients to participate.

2. Extracts from an examination of information contained in all of the FCS files representing clients completing Questionnaire #1. (20 files could not be located and therefore only 262 such files could be examined.)

3. Family Conciliation Services internal statistical records including daily and monthly intake sheets for 1985 and 1986.

4. Extracts from an examination of all court files filed in the Manitoba Court of Queen's Bench (Family Division) between November 1985 and April 1986 corresponding to 93 individuals who were court referrals and who were intercepted through the device of the initial questionnaire administered at FCS.

5. Extracts from an examination of all 170 of the files in the Manitoba Court of Queen's Bench which were petitions for divorce, which involved applications for custody and/or access, and which were filed in calendar year 1983. (This was to approximate a comparison group.) These data are referred to in this report as the "Archival Data" or the "Archival Files".

6. Structured telephone interviews with 42 Winnipeg family law practitioners (supplemented by several informal interviews) (see Appendix E).

7. Interviews conducted in person by one of the co-principal researchers with each of the Justices of the Manitoba Court of Queen's Bench (Family Division) (see Appendix F).

8. In-person interviews conducted by one of the co-principal investigators with six staff mediators (counsellors) in the office of Family Conciliation Services all of whom mediated cases represented among those clients completing Questionnaire #1. In addition the Director of FCS was interviewed.

ANALYSIS

The framework employed throughout the analysis revolves around the key actors. Emphasis is on the views of clients, staff, lawyers and judges. Thus, the report is somewhat redundant in that the same issues occasionally surface when discussing the data obtained from the key actors. Yet, since issues vary by actor (what concerns clients may have with conciliation vary from those of judges) this organization of data is appropriate.

Data for each case exceeded three hundred variables. Limitations of the statistical software required extensive partitioning of the data set. Manageability alone required construction of a number of sub-files. The conceptual framework from which the FCS program was described and the process of its mediation work provided the foundation for constructing sub-files. Variables which were relevant to more than one issue were included in more than one file. Each file was linked to the others for easy cross-referencing. These files constructed for computer-assisted analysis included the questionnaire, interview, FCS files and court data for each FCS client. A separate computer data file was constructed for the 1983 divorce cases with which we planned to compare population and outcome characteristics to those of current cases.

Interviews with FCS staff, Queens Bench judges and family law practitioners were not coded and prepared for computer-assisted analysis. Instead, the nature of these interviews required qualitative analysis supported by supplementary manually tabulated figures.

Following from the conceptual framework emphasizing the key actors important to the process and outcome of FCS, the data were analyzed to explore the views of these key actors on common and idiosyncratic issues. For instance, the convenience of FCS to the litigating parties is of relatively little concern to other than the litigants who must find parking and babysitters. Thus, such questions were asked of litigants but not of, for instance, judges. Such an issue was of interest in the analysis of litigants' views of the service while making no sense in relation to the views of judges and lawyers.

Less emphasis was given to outcome issues than to process issues for several reasons: (a) Mediation is not a compulsory service; (b) outcome is not totally (even largely) within the control of FCS; and (c) definitive standards of outcome are not established; and (d) researchers and mediation practitioners have yet to sufficiently define key concepts in measurable terms. Among the more appropriate outcome indicators at this time is the degree of acceptability expressed by clients, lawyers and judges about mediation as a service and the agreements produced. No set of criteria now exists which would allow a researcher, or anyone else, to sit down with a stack of agreements and sort them into piles of good agreements and bad agreements. One might find differences among agreements but these do not readily translate into credible judgements of which are better or worse than others.

Instead of focusing attention on comparison of agreements, we focused on whether or not agreements were reached. We then focused on how well the agreements held up over a four month period. While a relatively short period of time, four months is thought to be long enough for a pattern of compliance or non-compliance with the agreement to develop. Clients were considered to have sufficient experience with the agreement to form an assessment of its worth within four months.

A natural, although non-equivalent, comparison group was formed by the individuals referred to FCS. Our starting point in identifying the study population was the intake process of FCS.

Individuals who attended at least one session and where mediation was deemed to be the relevant service were defined as part of the study population. The study population of 282 referred clients who completed the first research questionnaire were split into two comparison groups. One group were clients who jointly mediated custody and/or access (successfully or unsuccessfully). The other group was non-mediated clients, defined as those participating in no joint sessions. That is, clients who attended all sessions at FCS without the other party.

IV. CONCEPTUAL FRAMEWORK

In the sections which follow this one we obtain a portrait of the mediation process in Winnipeg, first from the perspective of the mediators working in FCS, next from the Justices in the Family Division of the Manitoba Court of Queen's Bench and members of the Winnipeg Family Bar, and finally from the clients themselves.

As one might expect, the various "players" see the system and their role in it in different ways. Since each of the groups of people whose views are considered has the potential in their own way of creating and influencing the resulting system, their perceptions deserve careful attention.

While it may ultimately be useful and possible in objective fashion to determine the "reality" of the system, in another sense the reality is what people deem it to be. It may be considered "human nature" if some lawyers, for instance, perceive mediation to be something akin to a threat to their present procedures and consequently could be very hesitant in referring clients. If compelled to make referrals some lawyers may influence clients to be less than cooperative. Similarly, if counsellors perceive lawyers to be representatives of an antithetical "adversarial system" they may, without intending to do so, convey their feelings to clients thereby influencing the lawyer client relationship. Subjective perceptions are therefore not "mere opinions" to be discounted, but motivational antecedents which are "real in their consequences."

In this setting the sociological approach known as "dramaturgical analysis" has some heuristic value.

In an emergent social subsystem such as which we are analyzing in this report social "actors" must not only learn to "play roles" which they and others deem to be appropriate in the circumstances, they must also gear their "performances" to the role performances of "supporting players." The various actors in the piece use what power they may have to "negotiate" a system which reflects their interests (or ideological interests which they may choose to pursue). The various groups of actors -- in this case clients, lawyers, judges and mediators -- have to contend with one another. They also have to deal with the influence of others such as politicians, civil service and public service administrators, and lobby groups (such as feminist groups who may be critical of the system of mediation).

As time passes conduct becomes "routinized." Role definitions come to be shared and an accommodation is made. Change is constant, of course. Players continue to negotiate to attempt to make their perceptions of what is acceptable the expectations that are adopted by other actors. And outside influences continue to have their effect.

Consistent with the precepts of role theory is a conceptual framework used in studying implementation of innovations. The essence of the framework is that things new to an environment are naturally resisted. A prerequisite to institutionalization of an innovation is the acquisition of credibility. Other organizations and key actors are the source of credibility. No matter how well or poorly an innovation is performing, the views of the other key actors largely dictate the future of the innovation. Good programs can be defeated or dramatically modified in reaction to external criticism, well informed or not. Poor programs can be maintained because of support from other key actors.

The relationships among key actors is seen as an important feature of the FCS. Whether or not litigants are referred is somewhat dependent on the degree of credibility judges, master and lawyers ascribe to the service. When litigants are referred during the process of litigation it may be an indicator of their credibility. If litigants go to FCS and if they persevere to the point of an agreement, it is an indicator of the credibility clients ascribe to the service. Conceptually one might argue that clients who drop out of mediation see lawyers as a more credible avenue for solving issues of custody and access than they give to FCS. Those who stay with mediation, it might be argued, see mediation as a credible avenue for resolution of custody and access issues. This is of course a simplification of what might be occurring. Some couples cannot be expected to succeed in mediating an agreement because they have been incapable of discussing anything with one another for a long time. Other couples, although in conflict with one another, can work through mediation. Still other couples, not really in conflict with one another, use mediation very easily as an environment for coming to an agreement which might well have been reached without any external intervention. There are many variations on these themes.

Because the emphasis of the study is on describing the program and analyzing the process, the role(s) and credibility ascribed to FCS by other key actors are critical conceptually to the analysis. As discussed in the description of the analysis, to analyze FCS without reference to clients, staff, lawyers and judges would create a vacuum. There are no external criteria one could apply as a foundation for analysis. Key actors in the family law system are the most relevant reference for FCS analysis considering the stage of organizational and technical development (e.g., the technology of mediating family law issues) of FCS and family mediation generally.

It is with this conceptual perspective that we begin to analyze the data gathered in the course of this study.

V. THE COUNSELLORS

Interviews were conducted with the FCS mediators who mediated cases identified in the data-gathering period and who were still employed at the unit at the end of that period. In addition the Director of FCS was interviewed with respect to procedures and policies concerning mediation, as well as supervision and training of mediators. Further information regarding the experience and qualifications of mediators and the interview guide used appear in Appendix "D".

INTRODUCING CLIENTS TO MEDIATION

Counsellors confirm that clients come to them from several sources: through self-referrals, from lawyers, and from the courts. Each staff counsellor takes his or her turn on a rotating basis fielding telephoned inquiries and receiving referrals arriving at FCS that day (called by staff "being on in-take"). Requests come in a variety of forms, appropriate to the services offered by the unit and otherwise. Information and referral to other agencies may be the result. Or, the person phoning may need to see the worker for counselling or mediation. The policy of the unit is that the worker making initial contact with the client provides any subsequent service that may be necessary.

In cases where service begins with a telephone request for information, or for an appointment with a counsellor, the worker making the initial contact has an opportunity to provide information regarding the nature of mediation and the service offered through the unit. Some workers characteristically follow up this initial contact with a letter or a pamphlet giving further information or summarizing the information given in the initial telephone conversation. Many of the workers encourage clients at this stage to attend an "Orientation Seminar" offered by the unit as numbers warrant.

Sometimes initial contact with clients comes from referrals by lawyers (usually written referrals) or by the court. In the latter case clients may attend the FCS office directly after a court appearance and they may in some instances be accompanied by their lawyers.

Sooner or later the worker meets the client (singly or with spouse) in the worker's office (or in a meeting room in the office complex).

All of the workers interviewed describe initial contact with clients as an interactive rather than a didactic process. That is, the worker attempts to determine the clients' initial position: what does the client know or think about mediation. Misperceptions can be corrected and omissions in knowledge remedied.

There was considerable consistency in the responses of workers when asked what points they emphasize about mediation in initial contact with clients. Most can be said to attempt to provide information to clients that might impress them with the value of mediation either in the positive sense of emphasizing its benefits to the parties and to their children, or in the sense of discounting the alternative: the expense of legal action, the uncertainty of a court decision. One worker said she tells clients that "The court is big on parties reaching their own agreement".

Almost without exception, the confidential nature of mediation is stressed as is the fact that mediation depends on the involvement of both parties, and the primacy of parenting concerns. Likewise the role of the mediator as a "neutral" third party, the rules of the process (e.g. focused problem solving) and the voluntary nature of mediation are often impressed upon clients by counsellors.

Over and above the exchange of factual information is a process identified by one of the workers as the "contracting phase." The counsellor is working toward a determination on his or her part as to whether the clients are ready, willing and able to begin mediation and whether the clients are at least tentatively committed to tackling the work ahead.

The counsellors vary somewhat in the organization of their approaches to the initial phase. Three reported that they once were in the habit of using written checklists to make certain they had given all necessary information to clients and that clients had adequately informed them as appropriate at the commencement of mediation. Four said they used "mental checklists". Most are rather methodical, but one indicated a less organized approach -- that of determining ad hoc what is appropriate. All of them indicated that they seek at the end of the initial phase to be certain, however, that the clients want to mediate and that their decision is based on a factual understanding of what lies ahead in the mediation process.

"TIMING" AND MEDIATION

As noted in the subsequent section of this report elaborating the views of judges and lawyers, most suggest that "timing" is important in influencing the outcome of mediation. We asked the counsellors for their views on this issue and whether, in their estimation, the present system of mediation in the unified family court accommodates "proper" timing.

The counsellors were unanimous in the conclusion that propitious timing is an important element of mediation. One said that mediation can be helpful at any point in a conflict, but it is particularly difficult at the extremes: the very early stages of separation where emotions are in turmoil and parties may find their circumstances overwhelming, and at later stages where one or the other party is relying on the court process to achieve his or her objectives in the dispute. Two were specific, suggesting that "at least a couple" of months must have passed since the separation before mediation can be attempted. One suggested that conciliation counselling may be appropriate sooner than mediation and that conciliation counselling can "evolve" into mediation as circumstances allow.

One counsellor expressed the opinion that contact with lawyers (or "too much" contact) generally diminishes the prospect of "successful" mediation, whereas another counsellor suggested that contact with lawyers who are favourably disposed toward mediation can be a positive influence. In the latter case the prospect for mediation may be better than with self-referrals. The danger with lawyer-contact, in the words of one of the counsellors, is that the client will be "seduced into the adversarial thing."

Most of the counsellors are of the opinion, however, that the present system of referral is flexible enough to accommodate "proper timing." One observed that in the first few months after FCS began operation, and before the positive aspects of mediation became more widely accepted by bench and bar, the court schedule would sometimes "override" goals of creating a climate conducive to mediation. Lawyers referring cases were likewise not attuned to "timing" in mediation.

Sometimes, as one counsellor suggested, court referrals for assessments ought to be referrals for mediation (or "re-mediation"); sometimes referrals from lawyers are "too soon".

One counsellor expressed the opinion that sometimes lawyers refer clients that ought obviously to be "screened out" or, if referred, the lawyers should warn the counsellors of peculiar circumstances such as psychiatric problems or family violence. In general, however, the system operates as the counsellors think it ought to with respect to the timing of referrals.

THE MEDIATION PROCESS

Approach

All of the counsellors we interviewed indicated that they are relatively eclectic in their approach to mediation. Five indicated they had been influenced by the works of Saposnek, one said Saposnek was the main influence in her approach. Three also mentioned Irving: two in a positive sense, the other in the sense that she specifically rejects his approach. Ricci was mentioned as a primary influence by one.

While some counsellors are relatively "non-directive" or "not highly structured" in their approach others report using such techniques as prepared checklists. In the same vein, one characterized his style as "business-like" and practical, steering away from concentration on "relationships". On the other hand, others characterize their approach as relatively "therapeutic" and concentrate on such things as "communication skills" in the course of mediation. Our data are not extensive enough to permit us to explore correlations between elements of style and approach of counsellors on the one hand and case outcome on the other. As noted in the paragraphs under the heading "REACHING AGREEMENTS" later in this section of the report, counsellors vary widely in the extent to which the specific cases they deal with are likely to result in mediated agreements, full or partial. Since case assignment is random these data suggest that there may be patterns which deserve further research.

In summary, the counsellors are alike in the sense that there are no "disciples"; all are relatively eclectic. They vary greatly however in the main thrust of their approach from relatively structured and practical on the one hand to relatively unstructured and "therapeutic" on the other. There is no attempt to assign cases of a particular type to counsellors with a particular style. Since assignment is random, there is presently no data which would suggest that one approach is any more or less effective than another, let alone data on the interaction of "style" with client characteristics or other factors. In view of the divergence among counsellors in respect to eventual outcome, however, we would suggest that further research is in order.

Character of Meetings

Mediation sessions may potentially involve the litigants individually, together, or in some combination with others such as children or the parties' legal representatives. We asked counsellors how they characteristically structure mediation sessions.

Four of the counsellors indicated a pattern which involves seeing each party separately first and thereafter seeing them jointly. Subsequent individual sessions are only used to overcome "blockages" or "hidden agendas" that cannot be explored in joint sessions. One of the counsellors indicated that she used to begin mediation by seeing each party individually, but now does so rarely, finding that an initial telephone session adequately replaces an individual, in-person interview with each party. One counsellor indicated that the "economy of time" prevents an initial individual session with each party and subsequent individual sessions are reserved for children or "if something is wrong."

Involvement of Children

About half of the counsellors interviewed indicated that they often involve children in mediation. The remainder seldom or rarely do so.

Only one counsellor involves children in a consistent, structured way meeting first with the parents to secure their approval, next with a sibling group, then with children individually, then with the parents and each child, and finally with the entire group. Another counsellor who often involves children does so usually only with the entire group while one who seldom involves children will only see children individually or in a sibling group.

One specifically mentioned that she always reports back information gained from children to the parents, while another mentioned that she regards the information obtained from children as confidential.

There is no consistency with respect to the involvement of children in the mediation process and, according to the Director, no policy directive. Once again, there is no empirical evidence at present that would suggest whether or not the involvement of children correlates with outcome.

Making a Prognosis

The counsellors indicated that they are generally able to get some idea about the probable result of mediation very early in the process. The time needed to make a prediction will vary depending upon the availability of information from sources other than the parties themselves. At least by the second joint session (preceded in some instances by individual sessions) most counsellors believe they can make a prognosis.

Frequency and Length of Sessions

The clients in the population (282 cases) examined for this study spend between .05 and 15.25 hours in mediation with the majority on the lower end of that scale. The time is spread over one to five sessions, again with the majority (122 - one session) at the lower end of the scale. On average, each session is about one and a half hours in duration.

Counsellors we interviewed suggest that the number of sessions spent in mediation with a couple is from three to eight and most say that four or five is the usual number of sessions.When asked about the "ideal" number of sessions most counsellors indicated that the ideal very much depends upon the nature of the issues in dispute as well as the necessity to "try out" tentative arrangements and subsequently to review them with the mediator. Responses ranged from three to six sessions as most frequently being "ideal."

Most of the counsellors are of the opinion that couples need one to two weeks between sessions in order to try out arrangements. On average, the length of time between sessions is estimated to be about two weeks, but one counsellor suggested this can be too long for some couples. Momentum is lost if too much time passes.

Counsellors believe the ideal period of mediation from first session to agreement is in the range of 3 to 8 weeks. Counsellors gave variable responses. When asked what the actual average time from beginning to end is, most put the time in the range of 6 to 12 weeks.

RECONCILIATION

The general literature on marriage and divorce counselling suggests that some people may make "false starts" in the sense that they give outward indications of wanting to separate while harbouring feelings of doubt about whether separation or divorce is the course they really want to take. The result, from the perspective of the mediators in the FCS unit, may be a mediation referral that ought not to be there, albeit some sort of counselling service may be needed.

We asked counsellors what they do if they determine -- either in early contact with clients or later after mediation has begun -- that the marriage is "not really over."

Four respondents indicated that they always make efforts to determine whether the marriage is "really over" in initial contact with clients. One worker said that she needs to "get an absolute reading" and another noted that it is important to begin mediation by the parties hearing confirmation from one another that they have truly reached a point of breakdown in the marriage. One worker said that this matter is only explicitly addressed if the information signals it: for example, if separation has been relatively recent. The remaining two workers said that it is not an explicit part of their opening procedures to make this determination, however, both noted that they believe that it usually becomes quickly apparent if there is a mutual inclination to reconcile.

What do workers do if there is an inclination to reconcile which becomes apparent either in the early or later phases of mediation? First, it is important to consider that the workers appear to be directed by conflicting instructions: on the one hand, the policy of the unit is that workers should not engage in marriage counselling; on the other hand the ideology of "caring" which underscores the training of social workers directs that they ought not merely to cast clients adrift. Most workers therefore describe a "transition" which may take two or three joint sessions with the parties. Understandably, workers may be reluctant to characterize these transitional sessions as marriage counselling, preferring instead to call it "preparatory" or "ground work" in anticipation of continuing counselling by a private agency. Two respondents explicitly said that they do not do any sort of marriage counselling, while one openly admitted that "short-term marriage counselling" consisting of 3 or 4 joint sessions over a period of a couple of months would be in order.

Some of the workers noted that the Judges and the Master occasionally refer clients for reconciliation counselling. While the motivation for the courts doing so has never been made explicit, the workers have assumed that their function is to make appropriate referrals. The fact that the courts follow this course of action also gives justification for "ground work", "short-term marriage counselling" or whatever else one might call the transition between mediation and reconciliation counselling.

All of the respondents expressed the view that marriage counselling services available in the jurisdiction are inadequate. Specifically, delays in obtaining appointments, the deterrence of fees, and inconsistent quality were mentioned. Once again, the perception that marriage counselling facilities are generally inadequate adds justification to the information transitional counselling referred to above.

REFERRALS TO OUTSIDE AGENCIES

We asked FCS counsellors whether they think that services for separating and divorcing couples in the jurisdiction are adequate and whether they refer clients to private agencies for mediation (or more mediation).

Three respondents indicated that the general level of service is adequate in Winnipeg, though not necessarily in outlying areas. Several noted some "gaps" such as an absence of good support groups, particularly for children, and the need for day care facilities. Three workers expressed the view that there are not enough services to meet the demand.

All of the counsellors indicated that they either had or would refer clients to private mediators. One counsellor indicated he had only done so once in a case where the parties had, in the early phases of mediation, expressed their preference for a private mediator. The other workers indicated they either had referred or would refer clients to private sources for mediation to include financial issues. Two of the latter said that they would only make such a referral on the initiative of the parties.

For whatever reason, referrals for private mediation have only been made to two different private mediators. None has been made to "lawyer-mediators." Interestingly in this regard, one worker pointed out that the policy of the unit is not to refer to lawyers. The policy is, in fact, not to make referrals to lawyers for purposes of retaining legal counsel. There is no such policy with regard to referral for mediation.

SCOPE OF MEDIATION

As a group the counsellors interviewed are ambivalent about the fact that they are only permitted to mediate issues of child custody and access. Three indicated satisfaction with the restriction, but two of them said it makes sense only in terms of the rapprochement that must exist between social workers and lawyers in the realm of family law. Three respondents said that the limitation of scope is too restrictive in some cases; one said that he thought that all areas of disagreement in all instances ought to be open to mediation by FCS.

When asked if the counsellors often find it necessary in the course of mediation to make reference to financial and property issues only one said categorically "no". Two said that they will allow clients to vent their feelings regarding property and financial matters, but they will not permit mediation of such issues. Those counsellors also noted that they might suggest that clients continue mediation of those issues on their own, reporting any subsequent agreement to their respective counsel. Two of the counsellors indicated that they would skate the thin ice of mediating "in broad terms" financial and property matters, in the case of one counsellor, "if the issues are simple," and in the other case "only relating to child support."

Related to the general issue of the scope of mediation is the specific question of whether it is appropriate to mediate in the face of allegations of either spousal abuse or child abuse. Some of the judges and lawyers, whom we interviewed and whose views are summarized elsewhere in this report, expressed their opinions on these questions. We were therefore interested in determining from the counsellors how frequently they encounter instances of child and/or spousal abuse and what they do in the circumstances. Also, since the judges had expressed their opinions to us on these matters, we asked the counsellors what they thought the courts expected of them.

Five of the seven counsellors interviewed reported that they encounter spousal abuse often or frequently while the remaining two say that it is relatively rare. Part of the variation in response appears to be attributable to the definition of spousal abuse: to what extent "emotional" abuse is included within the definition. Only one of the counsellors -- one who reports encountering infrequent instances -- reported that spousal abuse generally precludes mediation. The others say that they try to explore the recency and severity of the alleged abuse (and any resulting power imbalance) before making a decision whether or not to invoke termination. At very least, the allegations of spousal abuse will cause counsellors to be especially alert to the possibility of the mediation process being affected by a power imbalance between the parties.

Five of the respondents indicated that they thought that the courts expected them to do the screening of cases where spousal abuse had been alleged; one of these expressed the opinion that the court ought to screen the more extreme cases themselves and refer directly for assessment. Two of the workers said that the courts give ambivalent messages: the workers are not certain whether they are expected to screen out some cases or mediate in any event.

There is much less ambiguity on the matter of child abuse. Again, however, there is a broad and a narrow definition of child abuse. If the narrow definition of physical abuse is used there is general agreement that such cases are not usually proper ones for mediation. If a broader definition is taken, it depends again on the recency and severity of abuse.

Most counsellors are of the view that the courts do not in general regard cases in which there is alleged child abuse as proper for mediation. Such cases are usually not referred and, if they are, as they may be if it comes before one of the judges from the general QB panel, FCS is expected to screen them out of mediation. In regard to this issue the views of judges, lawyers, and counsellors appear to be in concordance.

POWER IMBALANCES

Some critics of mediation have suggested that social, economic and historical factors have combined with the result that one spouse -- the wife -- is characteristically at a disadvantage when she must bargain in her own behalf. In this respect, then, mediation is regarded as a retreat from the gains that women have made in effecting family legislation that gives greater protection to the rights of women than ever before in our legal history. For this reason we were interested in how often counsellors believe they encounter instances of power imbalance in mediation cases and the way in which the mediators deal with such cases.

All of the workers interviewed report that power imbalances are a frequent or inevitable phenomenon among mediating couples. These imbalances, however, may favour either husband or wife and they vary from one case to another in nature and dimension. All report an arsenal of techniques to combat imbalance including the setting of clear ground rules, referral to a different worker in the unit for "aggressiveness counselling", individual sessions, and impressing upon overbearing clients the fact that their conduct may be jeopardizing the interests of their children. The greater the necessity for the mediator to use such balancing techniques, however, the greater the risk that the mediator will sacrifice neutrality. "Empowerment" of one party may be seen by the other to be taking sides. Therefore, in extreme instances, the mediator may have to terminate the process.

INTERACTION WITH LAWYERS

We asked mediators to state their views as to the proper role of lawyers in the mediation process, including a description of the actual involvement of lawyers from the perspective of the mediator. (The perception of lawyers and judges follow in Section VI).

Counsellors suggest that, with the occasional exception, lawyers are minimally involved as mediation proceeds. Some of the workers contact legal counsel for each party at the outset to advise that worker's involvement in the case. In the same contact they may request that lawyers suspend interim proceedings that might interfere with mediation progress. To a greater extent recently than when the mediation system was first introduced, lawyers cooperate.

All but one of the counsellors interviewed were content with lawyers playing a relatively distant role in the process. Most see lawyers as having a very minimal role once mediation is underway. Only one mediator suggested that lawyers ought to be more involved in reassuring clients at the outset and even lending validity to the mediation process by actually attending the first session with their client in some instances.

All of the counsellors expressed the opinion that lawyers ought to cease other activity on the case. Three said that at least all "active adversarial proceedings" ought to stop, while four respondents indicated that all activity, even correspondence between lawyers on matters of substance, ought to be suspended.

Counsellors prefer that they, not lawyers, ought to initiate contact between them. But, they are not averse to answering procedural questions from lawyers such as requests for estimates of how long the process is likely to take. They also appreciate being supplied by lawyers with information likely to have an impact on mediation, such as warnings regarding ticklish financial disputes and risk of physical harm to one party. Because the procedure is legally confidential, however, none of the counsellors is prepared to discuss matters of substance with lawyers. Lawyers now rarely approach counsellors with questions relating to the substance of mediation but this was not the case in the months just after the present system was introduced.

Counsellors report that they find it beneficial in some instances to initiate contact with lawyers to solicit their cooperation in getting their client to approach mediation with greater alacrity, to encourage their client to seek individual counselling as an adjunct to mediation, or to resolve an impasse in the process.

Most lawyers (according to all but the counsellor who would prefer lawyers to be more constructively involved and less distant from the process) conduct themselves as the counsellors think they ought to. There are individual exceptions and, in the view of some counsellors, the more "experienced" family lawyers and the "specialist" lawyers are more tractable, while less experienced and non-family-specialist lawyers are more liable to cause problems for the counsellors. There are, however, frequent individual exceptions to this general rule.

One of the counsellors has had lawyers actually present "a couple of times" during mediation sessions. Three have never had lawyers present during sessions and three said that they have only had lawyers present in the "introductory" session before any real substance was discussed. Among the latter three respondents, one worker expressed the opinion that lawyers ought to be more involved to the extent of occasionally participating in joint sessions, but that the pattern seems to have been set precluding such involvement.

In a more general sense, a number of counsellors expressed the opinion that they would like more "interdisciplinary involvement." They are cognizant of the fact that they are part of an emerging system and they would like more of an opportunity to share their concerns with bench and bar. One worker, reflecting some general principles of mediation, said, "We have the best system in Canada at the present time. We enjoy good rapport with the judges and the legal profession and ongoing communication allows continued growth." Another said, "There's quite a bit of sharing now, but there needs to be more dialogue." And another respondent said, "We need better understanding and acceptance by lawyers and a willingness to share the client."

TERMINATION

Infrequently mediators have to invoke their prerogative of terminating mediation. We asked them under what circumstances they have done or would do so. We found considerable consistency.

Reasons given for termination include allegations of child or spousal abuse, serious threats, extreme power imbalances incapable of remedy, the inability of one spouse to negotiate for reasons such as alcoholism, drug addiction or a psychiatric condition, overwhelming commitment on the part of one or both to the "adversarial system", and the inability to overcome an impasse after great effort to do so.

One counsellor indicated that when she terminates she invariably "leaves the door open" for future mediation in the event of a change in circumstances. Another said that she may "partially terminate" or continue with "watered- down mediation." By that she explained that she meant that she bears messages between the parties in an attempt to reach accord.

THE ISSUE OF COMPULSION

Elsewhere in this report we have described the Winnipeg system as one of "automatic referral" which may, to some observers, approximate a compulsory mediation system. The Winnipeg system is voluntary, but strong influences may be said to exist to push litigants toward mediated settlements.

We asked counsellors if they characteristically impress upon clients the voluntary aspect of mediation, and, if they do, how and when they do so.

Six of the counsellors interviewed said that the fact that mediation is voluntary is impressed on clients in the initial interview or even in a prior phone call. Five of these six said they especially want to be sure that clients understand that mediation is voluntary if the referral has come from the court.

Two of the workers, however, said they tell clients that if theirs is a court referral they "are expected" to attend or that they "Have to find out what mediation is about." De facto that may be so, but de jure it is false.

Only one worker said that she makes no effort to tell clients about the voluntary nature of mediation since, she said, "I assume they know." All of the workers expressed satisfaction with the present system of automatic exposure.

Most of the counsellors report that clients will not ordinarily resist a court referral. They will at least initiate contact. One respondent, however, estimated that as many as one-third of the court referrals assigned to her resist. The workers are more or less systematic in eliciting responses. Some have a regular system of "prompts" while others use a variety of techniques including letters and phone calls to clients and to their lawyers before they take the initiative of closing the file and reporting.

REACHING AGREEMENTS

The counsellors we interviewed, as might be expected, are committed to their profession. They believe generally that mediation, whether it results in agreement or partial agreement or not, usually has positive effects such as narrowing issues in dispute, forming the basis for more effective communication with regard to the needs of their children, and avoiding the adversarial system in its harshest mien.

If "successful mediation" is taken to mean mediation that results in agreement, partial or full, then our data indicate some variability of success rates among the counsellors interviewed for this report. Expressed as a percentage of the number of cases examined the rates range from 28% to 60%. It should be borne in mind that in our interviews with counsellors, we asked for a subjective estimate of successful outcome. We specifically asked for their views on the "ideal form" of agreement and their estimation of the proportion of cases where this ideal was achieved.

Most frequently the ideal form of agreement was described as detailed and unambiguous. In addition it was described by at least one counsellor as exhibiting clear thinking, creative and responsive to the needs of the litigants and their children, comprehensive in the issues it settles, dynamic in the sense that it will continue to suit all parties (children too) as circumstances change and as the children mature.

The counsellors interviewed estimated that the ideal is reached "most often", "fairly frequently", "fairly often", "a third to half of the time", "a quarter of the time", and "rarely." One refused to speculate. Undoubtedly, the on-going changes and improvements in methods of compiling statistical data at FCS, will have some effect on future outcomes as seen by counsellors.

The counsellors indicate that couples most likely to mediate agreements (and to approach the ideal agreement) are couples who have "shared parenting" during the term of their marriage and who have genuine concern for the well- being of their children. Sometimes cultural barriers interfere -- one counsellor made note of the absence of Native people among her cases. Education and related communication skills are thought by some workers to correlate with outcome, but one respondent suggested that both extremes are likely to include poor prospects. Similarly, another said that well-educated professionals are the least likely to reach agreements among the clients she encounters.

And what if the couple have reached an agreement that the mediator, on the basis of professional knowledge and experience, thinks is unsuitable or unworkable? Four respondents indicated unequivocally that, if the agreement will clearly operate so as to sacrifice the best interests of the children, termination is the proper response if the parents refuse to change their position. A sixth worker said she had never been forced to terminate in such circumstances, but she would do so if the situation required it. Two reported that they usually accede, but state their reservations in a lengthy report. Of the latter two, one said that she had recently re-thought her position on this matter and she thought that she would be more inclined in future to terminate if she had strong reservations. Most of the respondents specifically indicated that their perception of the best interests of the children serves to justify a strong response and one described mediators as fundamentally "advocates for the interests of children."

TRAINING OF MEDIATORS

Presently there is no formal standard of practice or training among mediators. The FCS professional staff generally have social work credentials, but few if any have had formal, specialized mediation training prior to the time they actually began separation and divorce mediation. Howevever, through a staff development program, all FCS staff received in-house training. Such is the nature of the development of mediation in Canada. We took the opportunity to ask the workers whom we interviewed, on the basis of their experience, what training and background of experience mediators ought to have and whether they sensed any gaps in their own foundation.

All of the counsellors interviewed regard a basic, general social work or social science education as fundamental to becoming an effective divorce and separation mediator dealing with child-related issues. One counsellor (with an MSW) said that this education ought at least to be at the Master's level. After that there is some difference of opinion. All regard practical, supervised experience as an essential addition to the theoretical base. Some claim that training ought to be of a varied sort to include exposure to the counselling of intact families, child development, and communication skills. Others claim that specific training in mediation is necessary, that this training ought to be structured (for example, a six-month on-the-job program wherein the candidate graduates from co-mediation with an experienced mediator to "solo" work) and that some publicly recognized credential should be available to be earned. In other words, the counsellors vary in their opinion as to whether the work they do requires good, generalist social work skills or specialist training as a mediator.

The opinions of the mediators we interviewed reflect what we have found to be the prevailing views of those working in the field. For some mediation is an emerging "profession" and the people of that mind are eager to establish the outward signs of a profession including certificates, codes of ethics (which are being established), and peer control. For others mediation is an extension of other forms of social work or legal practice -- it is not a profession on its own.

As might be expected, most of the counsellors we interviewed regret that they entered the field of separation and divorce mediation when it was difficult or impossible to receive the kind of structured exposure to mediation and supervised skill development that they recommend. In addition they would like more opportunity to continue to develop their expertise through supervision and feed-back from peers and through opportunities to learn more about such things as theories and techniques of negotiation and conflict resolution.

VI. THE PERCEPTIONS OF JUDGES AND LAWYERS

All of the comments in this segment draw upon a series of interviews conducted with the Justices of the Manitoba Court of Queen's Bench (Family Division) and 42 Winnipeg lawyers selected among those most active in family law matters. The characteristics of the respondents and the method of the interviews appears in the Appendices E and F.

REFERRAL TO THE COURT-BASED PROGRAM

a. Referral by the Court

Our inspection of court files indicates that virtually all cases where formal proceedings have been commenced, if custody or access are in dispute, are referred for mediation if the litigants have not attended of their own accord. The exceptions are those in which there are allegations of physical abuse of the subject children or where one of the litigants cannot be located. In cases where abuse is alleged our examination of current court files indicates that an immediate referral for "assessment" follows.

In our interviews with the Justices we asked each whether he/she generally refers cases to the court-based unit for mediation and, further, under what circumstances she/he would not make such a referral. All of the Justices indicate that referral is the general rule; some indicate they are more inclined to recognize exceptions than their brother/sister judges. For some judges an indication by one or both of the litigants that the litigants prefer not to attend for mediation, objections by counsel, evidence of a previous unsuccessful mediation attempt, evidence that a decision is urgent and will not await mediation, or absence of evidence that parenting has been at least marginally shared would be sufficient reason not to refer. Other judges indicated no such exceptions. All of the judges said that evidence of child abuse would be sufficient to preclude a referral for mediation.

The single Master of the Court of Queen's Bench (Family Division) also indicated that she regards referral to mediation as "automatic" when custody and access are in dispute and the only exception might be where there are allegations of child abuse.

Unlike some lawyers with whom we spoke, the judges are aware of the limited nature of mediation. They are not likely, for example, to refer litigants to the court-based unit expecting that they will receive more general counselling services there. Some judges typically, however, made "double-barreled" referrals during most of the period in which data were gathered for this project -- that is, if mediation did not conclude with agreement between the parties then a family investigation (assessment) and report were mandated. (The Division abandoned this practice in the Spring of 1986 since it seemed to be creating a backlog of assessments and some other problems in mediation.)

The reverse of "referral" may be regarded as active discouragement rather than mere absence of initiative. Therefore, we asked the judges if there had been or might be circumstances under which they might specifically suggest to litigants (or their counsel) that the parties not mediate their disputes. Four of the six indicated they would never do so. One indicated that the situation had not arisen, but, if presented with a case where child abuse was apparent and counsel was not apparently lending his/her active discouragement, the judge should not hesitate to discourage mediation. Another judge commented that lawyers may be riding a "mediation bandwagon" referring even "inappropriate" cases for mediation. That judge indicated that in pronouncing interim orders he would sometimes say to counsel, "If it doesn't work out, come back to me. Don't go to mediation!"

b. Referral by Lawyers

The lawyers we interviewed specifically identified twenty-one individuals, agencies and organizations other than the court-based unit to whom they have referred clients for mediation. Close examination of the list, however, reveals that not all of the individuals or organizations offer mediation. Some offer what may better be termed marriage counselling and some are more active in acting as family investigators whose reports may be introduced in court evidence. Some offer emotional support (rather than practical guidance) in adjusting to separation, single parenthood, etc.

We conclude from this that there is confusion among some members of the Winnipeg family bar (perhaps exacerbated by the Queen's Bench Rules) about the nature of mediation and its availability through the court and through other agencies. Nevertheless, there is a growing range of mediation services available in Winnipeg including the court-based (limited scope) service, behavioral science professionals (who may or may not limit the issues with which they are willing to assist), and lawyer-mediators (whose mediation practice is presently being examined by the Law Society of Manitoba to determine its concordance with professional standards and ethics).

The habit of the great majority of the lawyers interviewed is to refer clients to the court-based mediation service in circumstances the judges generally concur are appropriate. Most lawyers actively encourage their clients to attend. Many however voiced their dissatisfaction with the "spotty" nature of the service. The reluctance with regard to the court unit stems from the fact that a lawyer cannot be certain which of the counsellors will be assigned to one's client. One lawyer said that he has become so skeptical of the ability of some of the counsellors in the unit that he always recommends that clients seek service from private sources if they can afford to do so. For some lawyers the major complaint against the court-based service is not the perceived quality of service but the delay in obtaining an appointment. Many indicated that they are "in favour of mediation" but "dissatisfied with the present system" for the reasons stated: mixed quality of service and delay.

[We should note at this point that we draw no conclusions regarding the validity of the concern that lawyers have expressed with the quality of service. Several possible explanations could be advanced other than the conclusion that the quality of counselling is to be found wanting. The complaints could be spurious, for example correlated with the way in which lawyers perceive the outcome of mediation in particular cases. Or, the frequency of complaints could be consistent and unrelated to changes in research site and quality of service. We emphasize that we are, at this point, more interested in what lawyers and judges think about the system rather than what the present system is really like.]

We asked lawyers who were most favourably disposed toward mediation the reasons for their supportive response. Among those given were the observation that mediation dissipates hostility and encourages clients focus on issues to be resolved rather than on emotional states; it is in the best interests of children; decisions arrived at with the direct involvement of the parties themselves are generally more satisfactory to all concerned; many issues are not amenable to a strictly legal approach to resolution; and, the clients have the opportunity to minimize the financial costs of resolution or settlement.

Lawyers and judges voice the same reluctance to refer cases for mediation where there is evidence of child abuse. In addition, some lawyers indicated they would not refer cases where there was evidence of spousal physical abuse.

REFERRAL TO PRIVATE MEDIATION

We asked lawyers detailed questions about referral to private mediators; we asked judges whether they supported the idea of mediation beyond the resources specifically provided by the court.

Some lawyers indicated that, in absence of technical knowledge necessary to evaluate available services, they need to rely on some sort of accreditation procedure. Virtually anyone can presently hold himself/herself out as "family mediators". There is no standardization of training, restriction, and control at present.

Some lawyers appeared to be confused as to the role of the behavioral science "counsellors" in relation to family law disputes. Since many such counsellors may be involved in a variety of activities (including marriage or "reconciliation" counselling, personal counselling aimed at facilitating emotional adjustment to divorce or separation, "assessments" for purposes of recommendations to courts and in preparation for expert testimony) functional divisions may be unclear. The Rules of court, the name of the unit ("Family Conciliation Services"), the fact that many of the original personnel of the court-based unit came from a comprehensive counselling and assessment unit previously attached to the Provincial Court (Family Division), and the practice of judges to give "double-barreled" referrals to Family Conciliation (mediation followed by assessment if mediation does not result in agreement) all add to the confusion. When we asked lawyers to indicate to which private mediators they referred clients they often included on their list individuals and organizations who do not in fact offer mediation. Some lawyers are obviously confused about what services are available from what sources and the distinctions between and among the service options in which behavioral science professionals are involved.

Not all lawyers were confused as to the precise nature of mediation and most indicated that they occasionally refer clients to private mediation counsellors. The most frequently expressed reason for referral to a private mediator in preference to the court-based unit was the perceived "uneven quality" of service from the court-based unit. Other reasons for private referral include the following:

- clients ought to be given a choice of services;
- some clients are reluctant for one reason or another to use a government service;
- it may take a long time to get an appointment with the court-based service;
- the client may have a preference for a "religious" counselling approach;
- private counsellors are not confined to mediation of custody and access issues;
- private counsellors are perceived by some lawyers to be more innovative, less pressured, and more unbiased (i.e. not biased in favour of joint custody).

Judges were asked whether they were in favour of mediation (not by the present court-based unit) of issues not now within the gambit of Family Conciliation Services. Most said they were. One was in favour of extended mediation but stated that he was not aware of the existence of any resources other than the court-based unit.

Two judges expressed the opinion that mediation services other than the services provided by the court (or services offered on a private basis by similarly qualified persons) were not necessary since the present court system adequately insures financial disclosure and negotiation.

THE ISSUE OF COMPULSION

Winnipeg differs from other Canadian jurisdictions where mediation is a part of court services: measures have been adopted in the Winnipeg system to encourage mediation strongly. While it might be overstating the case to say that litigants are coerced into attending, many observers believe that the Winnipeg system stops just short of coercion, albeit the Rules of court provide for voluntary mediation. From litigants we attempted to determine whether they felt compelled to mediate. The lawyers we interviewed were asked whether they supported a compulsory mediation system. Judges were asked just how much encouragement they felt comfortable giving and whether they would be favourably inclined to the introduction of more legal compulsion to mediate custody and access disputes.

a. Lawyers' Position on Compulsion

Of the 42 lawyers who were interviewed 13 favour compulsory mediation. Ten female lawyers (of 27 women lawyers interviewed) stated that they would be favourably disposed toward compulsory mediation; three male lawyers (out of 15 interviewed) stated the same position. The following table summarizes the response of lawyers to this item.

TABLE 1 DISTRIBUTION OF LAWYERS FAVOURABLY OR DISFAVOURABLY DISPOSED TO MANDATORY MEDIATION BY LAWYER'S GENDER

LAWYER'S GENDER	DISPOSITION TO MAND. MEDIATION			TOTAL
	YES	NO	NO OPINION	
FEMALE	10	15	2	27
MALE	3	11	1	15
TOTAL	13	26	3	42

Several practitioners suggested one and only one visit to a mediation counsellor should be mandatory so that the clients can be advised by a trained counsellor what mediation can do for them. (This system, de facto, is what now exists in Winnipeg.) The premise for this suggestion is that the reluctance of clients to attend mediation sessions is based on ignorance and fear which can be alleviated through exposure. These practitioners believe that subsequent reluctance may be justifiable and therefore compulsion ought to end with the first visit.

Some practitioners support their contention that mediation ought to be mandatory by citing their experience: when they have pushed clients to go to mediation the clients have often returned with an agreement satisfactory to both parties.

Many of the lawyers interviewed were quick to note that a compulsory mediation system ought to exclude from compulsion cases where there has been sexual or physical abuse of a spouse or a child.

The majority of lawyers insist that mediation should be voluntary. While some have no quarrel with a system of "automatic referral" most are opposed to measures which would put further pressure on litigants to mediate. As several lawyers suggested, forcing people into mediation makes them resentful of the process and can be a countervailing factor in effecting an amicable settlement.

A number of lawyers commented that the system presently in place in the Winnipeg Court is tantamount to a compulsory system. There is a negative response from some judges if the parties have not attempted mediation. There is an unfavourable inference drawn by some judges from a party's refusal to attend mediation. It is de facto compulsory.

Most of the lawyers interviewed regard mediation as a desirable alternative in most, but not all, disputes over custody or access and they regard court referral as inevitable if they do not refer clients themselves.

A few lawyers are concerned that mediation sessions conducted prior to the filing of an Application or a Petition may not be protected. That is, the mediator may be a compellable witness. This is an unresolved matter in law. In some cases lawyers may prefer to await court referral. Their hesitation does not necessarily reflect ambiguity about the value of mediation, however.

b. Judges' Position on Compulsion

It should be noted that we did not ask the judges to express their satisfaction or dissatisfaction with the present law as regards mediation. We merely asked if they looked favourably on systems such as exist in California where litigants are more positively compelled to attend mediation sessions. As we understand it, in the California courts judges can refuse to hear cases on grounds that litigants have not attended for mediation or, even if they have attended, they have not seriously attempted to settle their disputes through mediation.

Four of the six Justices indicated that they look favourably on a compulsory mediation system. Of the other two, one said a judge might be permitted to "coerce" short of "denial of service." The remaining Justice was of the opinion that such a service must remain voluntary and the court should not "coerce" beyond insuring that litigants are aware of the service and its possible advantages to them in effecting settlement.

Of those favourably disposed toward a compulsory mediation system one would prefer a "California-type" system. One would not go that far, but would favour a system that would compel at least one attendance and in addition would refer a second time to mediation. The other two would require at least one attendance, but would not be inclined to send litigants back again if they did not voluntarily continue mediation sessions.

ADJUSTMENT OF ROLES ONCE MEDIATION HAS BEGUN

The introduction of "automatic" mediation has in some respects changed the way in which family law is practiced in Winnipeg. As with any dramatic system change there is a period in which role expectations are not clear. This absence of clear role definition, especially as it affects lawyers, was evident in our interviews with family law practitioners and with the judges who, in many ways, have the power to shape and apply role expectations.

We were interested in the way in which lawyers see their role particularly in relation to mediation counsellors on the one hand, and clients in the course of mediation, before and afterward, on the other hand. We were also interested in the way in which the various "players" convey their concerns and expectations to one another.

a. Preparing Clients for Mediation

Among our client population 49% indicated on our questionnaire that one of their motives for attending mediation is "lawyer recommended." The FCS file data for our client population indicate that 33.2% were "lawyer referred". We also suspect that many of the cases recorded in the files as "self-referrals" have been initiated at the suggestion of lawyers. Lawyers are, therefore, important "gatekeepers" in the mediation system.

We asked lawyers whether and in what way they prepare their clients for mediation. The majority said that they outline the process and give clients some idea of what to expect. In particular they point out that the process is confidential and its aim is to promote agreement on matters pertaining to parenting responsibilities. As most lawyers are favourably disposed toward mediation they encourage attendance and encourage "good faith" participation.

A number of lawyers said they encourage their clients to be frank and open. However some of the same lawyers and others said they encourage their clients to make note of potentially damaging admissions made by the other party in the course of mediation sessions. The lawyer may then use such information in cross-examination of the other party if necessary.

Some lawyers use the opportunity to bring up the matter of costs in discussing mediation with clients, observing that settlement can be preferable to expensive litigation.

Some lawyers reported that they give clients informational brochures prepared by Family Conciliation Services.
As indicated above, most lawyers take what might be called an informational approach. They emphasize the positive aspects of

mediation and provide the client with all the information they think they might need to enter mediation. But, they do not attempt to manipulate the result.

Other lawyers - a minority - characterize mediation as an integral step in the litigation process. These lawyers counsel their clients on making a favourable impression on the mediator, to keep close contact with the lawyer during the mediation process, and to view the mediation process as a negotiation procedure with some clear objectives in mind. They try, with their clients, to predict the issues that might arise. They may provide clients with lists of alternative positions that lawyer and client together have agreed are reasonable to take.

b. Lawyers as "Quasi-Counsellors"

It is well-known that lawyers --- family lawyers in particular --- may be expected by their clients to carry on general "support" beyond that strictly required of legal counsel. They may be called upon by clients to be "friends and confessors". Lawyers may be hard-pressed to refuse to play such roles out of sympathy for clients. Family lawyers often refer to this as "hand-holding."

Lawyers we interviewed were asked whether their function as "quasi-counsellors" had been changed with the introduction of mediation. More than half indicated that their function in that regard had changed marginally in that they were called upon less (or felt less compelled) to take the place of trained counsellors. Almost a quarter expressed the opinion that there has been no change in that regard. The remainder indicated they were not sure or expressed no opinion.

Most of those who reported no over-all reduction in "hand-holding" time spent with clients indicated however that the "intensity" of this aspect of lawyering is reduced by virtue of mediation.

c. Role of Lawyers in the Mediation Process

We also asked lawyers to tell us what role lawyers should play once the course of mediation has begun for a client. There are two distinct views: slightly fewer than half of the lawyers view what might be termed as an "Active" role as the appropriate one. The remainder regard mediation as an "alternate dispute mechanism" running parallel to the court process. In the latter conception it is not open for lawyers to be substantially involved. These lawyers see what might be called an "Observer" role as one that is appropriate.

(1) Active Role

In this role the lawyer is conceived of as an advocate who monitors the case closely throughout, including the mediation process. Twelve (out of 27) female lawyers and seven (out of 15) male lawyers choose to work primarily this way. These practitioners think lawyers should be reluctant to hand over issues to mediators; practitioners who do so are losing sight of the need for perpetual advocacy. They encourage clients to cooperate and work through the mediation process. At the same time the lawyer monitors the process. If the mediator's recommendations are in agreement with their own, the lawyer encourages clients to concur. They are likely to continue to negotiate property and other issues not subject to mediation at the same time mediation is going on. They advise clients on matters that come up in the course of mediation, discuss legal implications and proposals. They try to ensure their clients do not commit themselves (either legally or psychologically) to undesirable agreements.

(2) Observer Role

The second role is a "hands off" approach. Mediation is regarded as a "way station" in the legal process: in the system, but not of it. Fifteen (out of 27) female lawyers and eight (out of 15) male lawyers regard this role as most appropriate. They do not regard lawyers as functional during the period in which the client has been "side-tracked" into mediation. The lawyer holds the file in abeyance awaiting the outcome. Since the mediation process lasts only a few weeks the lawyer can safely stand aside and rely on the expertise of the social worker. Only when the client returns to the "adversarial stream" is the lawyer prepared to become involved once again.

(3) Role Alternatives

Some lawyers regard the appropriate role as one which might vary depending upon the needs of individual client. Thus they may be primarily "Active" in some cases and primarily "Observers" in others. The proper role will depend upon the degree of sophistication and the bargaining power of the individual client. Less sophisticated and more impoverished clients may require more active lawyer involvement.

A very rough indicator of whether lawyers regard the mediation process as a "side track" or an integral part of the litigation process can be gained from analysis of their response to the question, Do you generally stop all court proceeding with regard to the case while mediation sessions are in progress?

Twenty-eight of the 42 lawyers said they do stop all proceedings. Eighteen of 26 female lawyers and 10 of the 13 male lawyers responding to this item do so. The remaining 11 do not stop proceedings. The minority, if this indicator is accurate, show by this conduct the view of mediation as being an integral part of the total family litigation process.

TABLE 2 DISTRIBUTION OF LAWYERS ACCORDING TO WHETHER THEY DO OR DO NOT STOP PROCEEDINGS DURING MEDIATION

LAWYER'S GENDER	STOP PROCEEDINGS		
	YES	NO	TOTAL
FEMALE	18	8	26
MALE	10	3	13
TOTAL	28	11	39 *

* Of the 42 lawyers interviewed, 3 did not respond to this item.

We do not suggest that these responses should be regarded as accurate indicators of conceptions of mediation in and of themselves. In fact, those lawyers who reported stopping all proceedings and those who did not indicated that each case might require a different response; when issues of adequate maintenance and the safety of spouses and children come into play an immediate response might be essential. Regardless of what individual lawyers think is an appropriate role for them to adopt, the majority do tend to stop proceedings during mediation.

d. Interaction Between Lawyers and Counsellors

We have observed that there are two identifiable role interpretations evidenced by lawyers: Active and Observers. The same lawyers must deal with mediators. Not surprisingly the lawyers are often suspicious and critical of the mediators as the mediators are of lawyers.

As noted in an earlier section of this report, all but one of the counsellors interviewed prefer that lawyers play an Observer or "hands off" role. Only one counsellor interviewed said specifically that lawyers should play what we have described as the Active role. Some of the counsellors, however, are critical of some lawyers who, they suggest, ought to give more encouragement to their clients to engage in the mediation process. In a similar vein, many lawyers, content for the most part to stand aside, want more from counsellors.

Most of the lawyers whom we characterized as primarily Active (the minority) as well as those who are primarily Observers (the majority) agree on one point: they would like more feedback. Even if they regard the mediation process as a "side track" to the litigation process they would like to know what goes on. Often they do not hear what has transpired until the mediation process has been terminated - with or without agreement. Some said they would like to have some sort of interim report from the mediator -- a prognosis so to speak -- a schedule of meetings -- an estimated date of completion -- something to "keep the lawyer in the picture."

Moreover, some lawyers expressed dissatisfaction with the final reports received from mediators. Said one practitioner, "A one line letter isn't very helpful. I'd like to know what happened and why." Often clients are not very effective in filling in the blanks or in giving an unbiased rendition of what happened in mediation. A counselling professional's opinion would be helpful to the lawyer.

On the other hand, two lawyers whom we interviewed quite specifically commented that it is the responsibility of the lawyer and not the mediator to insure that the lawyer has information about the content of mediation. If the lawyer cannot obtain information through his/her client (or does not trust the accuracy of such information) it is open to the lawyer to investigate, contacting the mediator if necessary.

[Some of the judges also indicated to us that they would appreciate more information from mediation counsellors - not on specific cases, of course, but on the operation of "the system".]

The counsellors to whom we spoke quickly point out that mediation is by law a confidential process. They cannot, therefore, give information of substance to lawyers as much as lawyers may wish to receive such information or counsellors may wish to give it.

e. Lawyers' Role - as seen from the Bench

When judges were asked what is the proper role of counsel as mediation takes place they exhibited disunity similar to that of lawyers. In fact, there was no other point on which the judges took such diverse positions. Once again role expectations seem to reflect different perceptions as to the relative integration of mediation and the litigation process. The range we found is as follows:

- Counsel should "back off entirely" (unless client complains they are being forced into an untenable position) and deal only with the result.

- Counsel's involvement should be "minimal", that is they should be available for assistance (to clients or mediator) only if specially requested to give assistance.

- Counsel should be minimally involved but should "keep track" of the mediation process through discussions with client.

- Counsel should keep track and discuss particulars of any proposed agreement with clients as sessions go on. Information should flow freely among and between mediator and counsel, and between litigants.

- Counsel should regard the mediation process as any other "important step" in the litigation process. Clients should be thoroughly educated regarding the issues to be discussed and the nature of mediation as a "bargaining session." Counsel should try to find out which counsellor is likely to assigned be to prepare client to "impress" and deal with him/her.

- Counsel should arrange to be present at the first mediation session. They should actively encourage clients to involve themselves in mediation and counsel should be kept informed of progress by the mediator.

Given this diversity of views we were interested in how the Justices, as significant potential influences on the institutionalization of role expectations, communicated these role expectations to the family Bar.

All but two of the judges indicated they had communicated their views to counsel either in general forums (such as continuing legal education workshops or Bar Admission course appearances) or specifically in open court (only one) or interim proceedings.

THE SCOPE OF MEDIATION

The mediation service offered by the court is limited in scope to include only issues of custody and access. Private mediators are not so limited. Private mediators (whose training is diverse) are constrained however by other factors including their own sense of competence, their training, the desire not to offend the law (e.g. unauthorized practise of law) and professional standards (e.g. conflict of interest rules for lawyers). We have the impression (gained unsystematically in conversations with private mediators) that counsellors trained in the behavioural sciences and not law are more inclined only to duplicate court-based services (although they may be more apt to include the discussion of maintenance and occupancy of the marital home within their scope). The few lawyer/mediators that there are in Winnipeg are more likely to offer mediation of all issues.

In interviewing judges and lawyers we asked whether they were satisfied with the present limitation on the court-based counsellors to issues of custody and access. In addition, we asked the judges what qualifications should be required of a mediator who seeks to include financial and property issues within his/her gambit.

a. Satisfaction with the Present Limitation on Court-Based Mediation

Twenty-six of the 42 lawyers and all six of the judges are satisfied with the present policy to limit the scope of court-based mediators. One lawyer questioned whether mediation is appropriate even with such limits in the present circumstances: both the practices of the unified court and the law place distinct pressure on parties to mediate (e.g. Divorce Act provisions which, in a custody decision, directs the judge to consider the willingness of the litigant to facilitate contact with the non-custodial spouse).

Among the lawyers indicating satisfaction with the present limitation on the court-based system, two indicated that they would favour expanded scope if the court unit had resident lawyers to participate directly in mediation sessions or at least to consult with mediators. One lawyer thought that expansion to include "minor property matters" would be in order without change in the present qualifications of counsellors. One lawyer expressed the opinion that mediation counsellors should coincidentally be able to offer personal supportive counselling for litigants.

Among those indicating satisfaction with the present limitation many commented that the behavioural science training generally received by counsellors is not sufficient to comprehend property and financial matters of a complex nature. Some observed that the existing formal court rules (tempered by lawyer negotiation) are quite adequate to sort out matters other than custody and access.

Of the lawyers indicating a preference for a wider scope most suggested only a slight expansion (maintenance and minor property). Those favouring a much expanded scope generally qualify their opinions by suggesting that legally- trained professionals should, in some fashion, be involved in comprehensive mediation.

Likewise the judges expressed satisfaction with the present limits placed on the court-based mediators. One judge speculated that it might be possible to widen the scope provided mediators were more broadly trained or had the consultation of legally-trained personnel readily available to them. But that judge added that there is no present need for such a change. One judge expressed the opinion that the present limitation of scope applicable to the court-based service ought to be generalized. That is, only custody and access are amenable to mediation. Even private mediators therefore ought only to mediate custody and access.

Most of the judges and lawyers with whom we spoke are satisfied with the limitations of scope on the court-based mediation service. Many would welcome a slight broadening or a broadening with greater involvement of legally-trained experts.

b. Qualifications of Financial/Property Mediators

If mediation were to be applied to financial and property matters, either in a separate process or by extension of present services, what sort of training ought the mediator to have? This question we put in a relatively direct form to judges and indirectly to lawyers (the latter in the context of discussion of the present limitation of court-based mediation).

Lawyers were most emphatic that the mediation of financial and property matters, with the exception of the most "minor" sort, ought only to be conducted by mediators with some legal training. Some thought that a broad knowledge that comes through academic legal training combined with family law experience is essential; a few said that a reasonable grounding in family law might be sufficient for all but the most complex of cases. Most, in other words, thought that law practice credentials would be necessary.

The judges were similarly inclined to believe that some firm grasp of law would be necessary. But they were more apt to indicate that it is the knowledge rather than the practical experience of the lawyer that would be necessary. Two indicated that accounting knowledge such as that possessed by a Chartered Accountant might be as useful, or even more useful, in mediating financial and property issues.

EFFECTS OF MEDIATION

a. Effects on Litigants

Both judges and lawyers were asked questions regarding the effect of mediation on litigants themselves. While some respondents readily admitted that they had no real evidence on this subject beyond their own necessarily limited experience, few refused to speculate. The responses are interesting not so much in their accuracy as they are evidence of a system of beliefs about mediation. We would suggest that support for the mediation system by lawyers and judges stems not from the actual effects of mediation upon litigants as it does from perceived or assumed effects.

As one empirical indicator of the effect of mediation one judge pointed out that there has been a general reduction in the court in the frequency of custody trials. While the other judges cited no single empirical indicator, they expressed the belief that the overall effect of mediation on litigants is positive. Some of the reasons cited were as follows:

- even if the parties do not reach agreement, issues are clarified and narrowed;

- mediation gives a better prospect for a custody agreement that is satisfactory both in terms of the needs of children and parents;

- agreements or even partial agreements reached by the parties themselves are generally more complete in their detail than orders imposed by the courts;

- fathers generally are accorded more rights through mediation (although judges were divided on whether this effect is totally positive).

Lawyers as well were asked what impact mediation generally has on the outcome of cases. We must qualify our generalizations regarding the response: some lawyers responded in terms of the impact that mediation might have "in theory" or in some sort of "ideal" circumstances. Others responded in terms of the existing system in Winnipeg (of which many were critical as noted above).

Among the 42 lawyer respondents 18 indicated that mediation clearly has an impact. Only one of these concluded that the impact is generally negative, that is contrary to the interests of women as a group. Two indicated that it "sometimes" changes the probable outcome of a case. Seven suggested that the probable final result is not usually altered by mediation. The remaining 15 said they really could not say whether the probable outcome of most cases is altered by mediation.

While many lawyers do not believe that the end result in terms of the objective arrangements for custody and access is changed through mediation, many believe that there are subjective differences in outcome. Litigants who settle issues through mediation generally find the end result more acceptable. Moreover, in the process of mediation there is an emotional catharsis, some suggested, that increases satisfaction with the end result, whatever that result may be.

Which leads to the next point: the majority of lawyers expressed the opinion that mediation generally (but not necessarily) reduces the level of hostility between the parties. Some warned however that "unsuccessful" mediation may in the main have exactly the opposite affect. When levels of hostility are reduced the job of the lawyers in negotiating settlements and in communicating with clients is made easier.

Most lawyers observed that where mediation results in agreement the process in very much expedited. For this reason, it may always be "worth a try."

We asked both lawyers and judges whether, in their opinion, mediation might specifically or generally prejudice the interests of litigants. Notwithstanding the favourable impression both of these groups have of mediation, many of them could think of ways in which parties could be disadvantaged.

Some lawyers mentioned the following possible prejudicial circumstances:

- an adverse admission made in the context of mediation can be used by the other party (i.e. the information, not the admission itself);

- mediation can be used to delay (or may unintentionally delay) a case thus working to the advantage of the spouse having de facto custody since courts will subsequently be reluctant to upset a relatively long standing arrangement;

- clients may be rendered vulnerable to the direct influence of an overbearing spouse;

- clients may be pressured to abandon a reasonable and responsible position or risk the appearance of being "uncompromising" and "unreasonable".

The judges were less likely than the lawyers to recognize or admit possible prejudice to litigants. Thus three of the six judges said there was "no prejudice" or "none that I am aware of." One said that quite the contrary to a "prejudicial" effect, there is a "reverse prejudice." That is, the willing litigant is afforded the opportunity to appear as cooperative and reasonable even though that appearance belies the actual situation.
Two of the judges noted possible prejudicial affects. Among these are the consequences of delay as pointed out by some lawyers as well. Another point was also echoed by some lawyers: a litigant taking an uncompromising but thoroughly reasonable position may be made to feel that he/she is "wrong" and abandon his/her position.

Another possible prejudice was mentioned by a judge: litigants may agree to unworkable or unsatisfactory agreements and must therefore relitigate at a later date. Variation of an order will be made more difficult by the fact of contrary prior agreement.

b. Effects on Lawyers

There was some speculation by some of the people with whom we consulted in the design phase of this study that lawyers would resist the introduction of mediation into the family litigation system on the grounds that it would reduce the demand for legal services and erode the status of lawyers within the system. The lawyers whom we interviewed evidenced no such resistance. Most, on the contrary, are positive toward the inclusion of mediation in the family law process even though most are at the same time critical of specific aspects of the mediation system as it presently exists in Winnipeg. Beyond the general attitude of the family bar we also attempted to ascertain precisely how the role of the lawyer and the nature of the lawyer-client relationship have been changed with the advent of mediation.

We asked lawyers a number of questions regarding the impact that the introduction of "automatic mediation" in the Winnipeg court had upon their relationship with clients who mediate and on their family law practices in general.

About half of our lawyer respondents reported that there had in fact been changes in the lawyer-client relationship in cases where the parties attend for mediation. Those who did report changes were not consistent in their indication of the ways the relationship had changed. And, they had mixed feelings about the changes.

Many, in particular those who were part of the majority of lawyers who primarily adopt an Observer role (see supra), indicate that there is a decline in the involvement of lawyers. Lawyers do not participate to the same extent and in the same intensive manner as with non-mediated cases. This creates some distance in the lawyer-client relationship. For most, however, this "cooling" of the relationship is welcomed. For a very small minority this change is not seen as desirable. Said one lawyer, "The client sometimes sees the relative withdrawal as a sign of weakness on the part of the lawyer. The lawyer isn't doing the full job." The lawyer-client relationship suffers, in the opinion of some practitioners, because the lawyer has "lost control over a crucial aspect of the case."

On the positive side increased role distance helps to clarify the role relationship: specifically, the lawyer is the litigator/negotiator and not a quasi-counsellor, friend and confidante. In that sense, one lawyer observed, the relationship with clients gains strength.

In the same vein, one lawyer noted that mediators sometimes are able to communicate to clients the limited, albeit important, function that lawyers play in the resolution of family disputes. The lawyer's role as a professional with limited albeit important functions is thereby strengthened.

Another effect of mediation on lawyers, according to some whom we interviewed, is that the lawyer is less involved in litigation and correspondingly more involved in negotiation, at least insofar as custody and access disputes are concerned. This too is seen as a welcome event by most lawyers.

While only half of the lawyers whom we interviewed responded that there had been a definite change in the lawyer-client relationship, substantially more indicated that at least one "business aspect" of their family law practise had been altered since the introduction of the changes coincidental with the establishment of the unified family court in Winnipeg. Specifically, more than a third reported changes in the total number of billable hours charged to family law cases.

Mediation has reduced the number of billable hours charged to family law files in the estimation of 29 of the practitioners interviewed. Five indicated that there has been no change in this respect. And the remaining 8 respondents could not estimate whether mediation had any impact on the total billable hours.

In explaining their responses some lawyers (in particular those who accept Legally Aided cases) pointed out that while there may not be an overall reduction of billable hours there has been a reduction in the number of non- billable hours spent on family law cases. One lawyer noted, voicing the sentiments of quite a few of our lawyer respondents, "It has taken away billable hours all right: billable hours I was delighted to lose!"

While 29 of the 42 lawyers interviewed report a reduction in billable hours charged to family law files, about the same number said that the total volume of family cases had not been reduced or altered.

In summary, the lawyers we interviewed see the impact of mediation on their practices in positive terms. While the role of counsel has lost some of its intensity and comprehensiveness, many lawyers are pleased to be able to take on a more restricted and, in their view, professional role. They are more comfortable as legal advisors. While some billable hours may have been stripped away, probably the greatest reduction is in non-billable hours spent on family law cases. The over-all effect is not seen by the lawyers we interviewed as threatening their livelihood. The volume is still there and probably growing.

c. Effects on Courts

The commencement of the present system of mediation in Winnipeg began at the same time that comprehensive changes were introduced in the jurisdiction of courts and the rules of court procedure. Therefore, it is difficult for anyone accurately to isolate the effect of mediation on the progress of cases through the court system. On the presumption that a subjective indicator would be preferable to none at all and, further, that judges and lawyers would be in a good position to make estimates in this regard, we asked both groups whether they thought mediation tended to speed up or delay progress or whether it had any affect at all.

Both the judges and the lawyers were divided on this point. Most were equivocal -- noting that the effect varies from case to case and it is therefore difficult for any one person to estimate the "average" effect. Some said that if mediation does not result in agreement that it delays progress, while if mediation does result in agreement or partial agreement it expedites. [Note - this observation conforms with research data in Colorado courts - cite.] Only five lawyers were of the opinion that mediation had no overall effect on the expedition of cases through the court system.

One lawyer observed that mediation can be used by lawyers purposely to delay a case if it is advantageous to one's client to effect a delay. Some lawyers suggested that if mediation delays the case in the court process such delays may nonetheless be beneficial to one or both litigants and to their children. In other words, the expedition of cases may be a "system goal" that does not necessarily operate in the best interests of litigants. Regardless of the result of counselling, mediation may permit a period of "cooling off" and "maturation of issues" that heightens the possibility of a "just result."

Three of the judges expressed the opinion that mediation has the overall effect of expediting cases through the court process. One said that the overall effect is delay, but that is so because of the overextension of present resources -- there are not enough counsellors to meet the present demand for service. Only one of the Justices expressed the belief that mediation is neutral in its influence on the expedition of cases; one expressed no opinion.

One of the beneficial effects of mediation suggested by the research literature is the reduction of rates of relitigation. Mediation has not existed long enough in Winnipeg to measure quantitatively this hypothetical effect. Judges were asked whether in their perception mediation reduces the tendency (or necessity) to relitigate. Once again, respondents prefaced their answers by saying they have no direct evidence on this point. Four of the six went on to express their belief that litigants who reach a mediated agreement are less inclined to relitigate citing either "common sense" or the research literature as support for their belief. One judge responded with an unqualified "Definitely" while another said that only litigants not pressured into mediated agreements would be disinclined to return to the courts while those who were subtly, insidiously, or in ignorance coerced would be more inclined to return. The same judge warned against courts adopting too much persuasion in getting litigants to mediation since the overall systemic effect may be to reduce rates of primary litigation and at the same time to increase rates of relitigation. This observation was made by a number of our lawyer respondents as well.

One of the judges indicated an extensive knowledge of the research literature on the systemic effects of mediation. That judge said that it is impossible, without empirical comparisons, to come to conclusions about the effects of the particular system of mediation in the Winnipeg court on rates of relitigation.

Most of the lawyers agree (and we concur) that it is too early to tell whether mediation will reduce rates of relitigation in Winnipeg.

d. Effects on Children

Most judges and lawyers expressed the belief that mediation is generally effective in serving the best interests of children subject to separation and divorce proceedings. It increases the likelihood that the parents will enter an adequate arrangement to care for the needs of children and, moreover, that they will participate in such arrangements with alacrity.

One judge observed that parties to mediated settlements are more apt to be satisfied with the terms of settlement than are parties where the terms are court-imposed. Thus, even if the content of the terms of a mediated agreement are identical to those that might have been imposed by a court the parties are "happier". "Happy litigants make happy parents," said the judge, and "happy parents are better parents." Thus, mediation works to the advantage of children.

Many of the lawyers interviewed indicate that mediation may go a long way down the road to furthering the best interests of children, but it does not go far enough. Some expressed the need for an official "child advocate" where young children are involved and greater inclusion of older children directly in the mediation process. Some noted that the court Rules allow for the inclusion of children in mediation, but they believe that this provision is not often used.

PRESSURE TO COMPROMISE

We asked both the judges and the lawyers whom we interviewed whether, in their perception, court-based counsellors exerted pressure on parties to formulate or accept agreements of particular sorts. We had in mind, of course, the frequently heard criticism that the mediation system as well as individual counsellors are inclined, even in absence of empirical data to support the position, to regard as generally preferable some sort of "shared parenting" arrangement (called by most lawyers, judges and clients to whom we spoke "joint custody").

Most lawyers expressing an opinion on the issue indicated that they do not believe such pressure is exerted on their clients. Similarly four of the six judges either said categorically that no such pressure is exerted on litigants or, the more cautious conclusion, that they have "no evidence" of pressure.

Twelve of the 42 lawyers believe that there is a "bias" (systemic or personal) toward joint custody. Eighteen say that there is no such bias apparent. The remaining 12 were equivocal or expressed no opinion on the matter. Therefore, fewer than a third of the lawyers interviewed clearly are of the opinion that counsellors are biased in favour of joint custody arrangements.

The counsellors believe that any apparent bias is spurious. That is, clients inclined toward "shared parenting" are more apt to request mediation and/or to continue mediation to the point of full or partial agreement. Also, clients who mediate are more likely to be exposed to and to consider seriously some sort of shared parenting agreement. These factors and not counsellor bias, the counsellors insist, explain the result.

Whether mediation counsellors do or do not "pressure" clients toward joint custody a number of lawyers expressed the opinion that they put pressure on clients to come to agreement, sometimes in a manner which the lawyers find disconcerting. That is, the counsellors unintentionally present themselves as representing the "official line" - the position of the court. They are aided in this perception (or misperception) by their physical location next to the Law Courts and their apparent attachment to the court. (In fact, Family Conciliation Services is administratively embedded in Community Services rather than with the Courts in the Ministry of the Attorney- General.) Particularly to unsophisticated clients, some lawyers fear, the court-based mediation counsellor represents the power of the court.

We asked lawyers and judges whether they thought that mediation counsellors (court-based) ought to "push harder" for clients to reach agreement. Most lawyers (30) who expressed themselves on this issue said "no"; only two respondents said that counsellors should push harder. Five of the six Justices offered opinions on this question: one expressed the opinion that counsellors ought to, with court support, push clients harder to effect a compromise and so to reach agreement. Two of the judges expressed satisfaction with present practices in this regard. Two judges said that counsellors may sometimes "push too hard" and that, as a result, litigants may assent to agreements to which the litigants are not truly committed.

In summary, most judges and many lawyers are not of the opinion that clients/litigants are unduly "pressured." Several lawyers and one judge expressed the opinion that there may be undue pressure on parties. Two lawyers and one judge indicated that more aggressive pressure to compromise on the part of counsellors would not be unwelcome. One judge and several lawyers are particularly concerned that mediation too often results in joint custody arrangements in circumstances where such arrangements are inappropriate. Counsellors suggest any impression of bias is spurious.

SPIN-OFF EFFECTS

Some of the support for mediation stems from the impression that participation in mediation -- whether the parties reach full, partial, or no agreement on matters of custody and access -- has desirable "spin-off" effects. We attempted to elicit from judges and lawyers whom we interviewed whether they see spin-off effects and what such effects may be.

Twenty-four lawyers (of 42) indicated that mediation, independent of outcome, influences positively the settlement of issues other than custody and access. Among those many indicated that the effect was "minimal" however. Eight respondents believe that mediation has no effect on other issues and three say it does "sometimes". A few lawyers indicated that the spin-off to property and maintenance issues is more likely when the couple is counselled by private rather than court-based workers.

Twenty-eight lawyers answered positively when asked whether a mediated settlement of custody and access encourages pre-trial settlement of issue other than custody and access. Eighteen of the lawyers believe that mediation, regardless of outcome, reduces the length and frequency of trials. Fourteen said that the length and frequency of trial were not so affected; the remaining 10 expressed no opinion or were equivocal (e.g. "only if mediation is at least partially successful").

Among those lawyers indicating agreement with the proposition that mediation, regardless of outcome, reduces the length and frequency of trials, one indicated that mediation may be a "turning point" in the sense that the greatest hurdle has been overcome, or the litigant may be overcome with doubt and effectively "gives up the fight."

One lawyer indicated that although the frequency of trials may be unaffected, the length is reduced since issues are narrowed.

Four of the judges are of the opinion that the frequency and length of trials is reduced by mediation. Said one, "It happens because the process is therapeutic and emotion is vented. The parties have a better understanding of the issues, as well, and a better understanding of the position of the other spouse."

Most of the judges are of the opinion that the settlement of property and financial issues is facilitated by mediation, especially, but not only, if custody and access arrangements are settled through mediation.

One Justice indicated there is an absence of evidence on spin-off effects. In that judge's experience in the practice of matrimonial law a settlement or partial settlement of custody/access issues could provide the ground work for a just settlement of other issues. It could result in a party perceiving an ultimate "loss" and giving up (or giving in) on other issues. Or, it could heighten the perceived importance of the remaining issues creating a "zone of final resistance." In summary, the classic lawyer's response is appropriate: "it depends!"

In terms broader than just the measurable affect upon the processing of cases, we asked lawyers whether they thought that their clients benefit from mediation whether or not agreements are the result. Twenty-three lawyers of the 42 interviewed said, "Yes."

In summary, most judges and lawyers agree that there are positive spin-off effects of mediation regardless of whether the result of participation is agreement or partial agreement on custody and access issues. In the view of most of them, justification can be found separate from tangible outcome.

SATISFACTION WITH THE RESULTS OF MEDIATION

In addition to questions asked directly of clients either through questionnaire items or through telephone interview questions, we also asked lawyers and judges whether they themselves were usually pleased with the mediated agreements and, in the case of lawyers, whether they thought that their clients were generally satisfied.

a. Judges

Initially we had hoped to determine what judges thought of Consent Orders based on mediated agreements presented to them for fiat. We found, however, that judges presented with such Orders are unaware of the process by which the agreement was reached. That is, there is nothing on the draft Order which identifies the Order as one which is substantially the product of mediation. In view of this we asked judges if they sometimes found it necessary to refuse to sign certain draft Consent Orders.

Most of the Justices indicated that they have never (2 judges) or seldom (2 judges) rejected orders based on the consent of the parties. Two indicated that they had done so with a relatively frequency as compared with brother and sister judges. The circumstances where a consent order might not be signed include the following:

- allegation of "poor parenting" are not addressed by the terms of the order;

- prior sexual abuse of children has been alleged and there is no apparent provision for the protection of the children;

- the conditions of the order indicate too much disruption for the children.

b. Lawyers

Lawyers, of course, are informed of the result of mediation through a report from the counsellors. We asked them if they generally find the agreements worked out to be satisfactory. Thirty-six of the 42 lawyers said that they do. Two found them generally to be unsatisfactory (deficient in detail and comprehensiveness); two said it is "about 50/50." Many who indicated general satisfaction also said that agreements often require some "fine tuning" in the shadow of the law.

Lawyers were also asked how often they felt compelled to advise their clients to reject a mediated agreement. The majority reported that they had never or rarely felt so compelled or had advised rejection only once. Those who have advised rejection have done so when they concluded that a wife (their client) had been coerced ("power imbalance"), that it was obvious that the agreement contained terms that the client could not "live with", or that there had been a significant change in the circumstances existing at the time that the agreement had been negotiated between the parties.

Another measure of the "satisfactoriness" of a mediated agreement is its "conclusiveness": does it have a lasting effect? The majority of lawyers reported that mediated agreements were relatively conclusive. If they subsequently need alteration the parties are likely to effect changes by mutual agreement without resort to court process.

c. Clients (as seen by lawyers)

We also asked lawyers to report on their clients' perceptions of the agreements they arrive at through mediation. Thirty-seven of the 42 lawyers to whom we spoke indicate that their clients usually find such agreements to be satisfactory. Two said their clients are not generally pleased; two said the reactions are "mixed".

GENERAL COMMENTS AND CONCERNS

In our interviews with judges and lawyers we tried to make note of general comments regarding the present mediation system that were of interest, but which were not directly in response to the questions we asked.

a. Limitation of Method

Some lawyers suggested that the establishment of a publicly-funded mediation service ignores in some respect their perception that mediation is a "middle- and upper-class service". That is, it depends for its success upon a level of sophistication, articulateness, and education that is not universal. This, they suggest, ought to be kept in mind when attention is given to funding and/or expanding the court based service. This "bias" ought also to be kept in mind if "coercive measures" are adopted to expose disputants to mediation.

In the same vein, some lawyers expressed the opinion that there is less need for mediation services in Manitoba than there is for a comprehensive, possibly publicly-funded, comprehensive counselling service to assist separating and divorcing couples.

c. Timing

Some judges and some lawyers referred in fairly strong terms to the importance of timing in the provision of mediation services. Oddly enough, however, they were sometimes at odds in suggesting what the "right" time for couples to mediate may be. Some suggested that it should be "early", before spouses become committed to particularly negotiating positions. Others suggested that it must occur well after a separation at a point when spouses had some clear idea of the problems that need to be worked out through mediation.

VII. CLIENT DATA

In this section of the report we examine data regarding the client experience from initial referral or contact, through mediation sessions, and afterward. Extensive use is made of data from the initial questionnaire completed by 282 clients in the FCS office, FCS file records for this population, follow-up interviews with 138 of the 282 clients who completed the initial questionnaire (four months after file closing), and FCS statistical records.

The intention stated in the final research design was to use a second measure -- a questionnaire completed by clients at termination. Problems in administering this instrument proved to be insurmountable. Only 67 respondents completed it. We then revised our interview schedule to elicit most of the information we had hoped to gain from the second questionnaire. Therefore the second questionnaire data are eliminated from the analysis that follows.

Data touching upon children are, for the most part, not dealt with in this section, but are reserved for a separate section of the report. (See "Best Interests of the Children" section.)

REFERRAL

1. Source

Clients are either referred to FCS by the courts or lawyers, or they initiate contact themselves. We determined through a preliminary search of court files before the data gathering phase of this study began that virtually all cases in which custody or access are at issue are sooner or later referred to FCS for mediation by judges or the Master. Excluded are cases where clients have attended at their own instigation.

We believe, based on information informally received from lawyers, many of the contacts apparently initiated by clients themselves are actually initiated at the suggestion of lawyers who have been contacted but not retained. To some extent this explains the differences in source of referral using the two bases shown below: (1) FCS daily intake records; and (2) FCS records for the 282 clients completing our initial questionnaire. An additional bias exists because we attempted to limit the population completing the questionnaires to mediation referrals only while the FCS intake records are comprehensive.

During the period in which we tracked clients through FCS, 282 individuals completed our initial questionnaire (see Appendices A and G). Table 3 shows the source of referral of these cases as indicated in the FCS file records.

TABLE 3 FREQUENCY AND PERCENT DISTRIBUTION OF CLIENTS COMPLETING QUESTIONNAIRE #1 BY SOURCE OF REFERRAL: FCS FILES

SOURCE OF REFERRAL	NUMBER	PERCENTAGE
Court	116	41.1
Lawyer	87	30.9
Self	53	18.8
Other or not known	26	9.2
TOTAL	282	100.0%

The most frequent source of mediation referral during this period was the court, followed in turn by lawyers, and self. We have reason to believe that these frequencies change from time to time. In particular, as lawyers and potential litigants increasingly become aware that clients are almost inevitably referred by judges and the Master, they more and more often do not await that inevitability. Also, we expect that lawyer- and self-referrals increase proportionately during vacation periods when the courts operate on reduced capacity. No consistent pattern of referral is apparent from data available to us at the present time.

As described in the portion of this report based on interviews with counsellors, each of the FCS staff counsellors takes turns in rotation on "intake." Each referral or telephone inquiry is noted for internal statistical purposes.

Internal statistical procedures and categories have varied over time. This makes comparisons difficult.

For the 11 month period June 1985 through April 1986 intake record sheets show a total of 1,153 individual contacts. The recorded source of referral is indicated in Table 4.

TABLE 4 FREQUENCY AND PERCENT DISTRIBUTION OF FCS CONTACTS BY REFERRAL SOURCE: FCS INTAKE RECORDS:06/85 TO 04/86

SOURCE OF REFERRAL	NO. CONTACTS	PERCENTAGE
Court	380	33.0
Lawyer	226	19.6
Self	472	40.9
Other or not known	75	6.5
TOTAL	1153	100.0%

Not all of the 1,153 contacts result in files being opened. The 1,153 figure represents contacts not necessarily different individuals (e.g. one person may be represented several times).

The following table presents the 1,153 contacts as they are defined by FCS daily intake statistical records.

TABLE 5 FREQUENCY AND PERCENT DISTRIBUTION OF FCS CONTACTS BY INTAKE OUTCOME: 06/85 TO 04/86

INTAKE OUTCOME	NO. CONTACTS	PERCENTAGE
No file opened	108	9.4
Single contact only	142	12.3
Phone Contact Only	192	16.7
FCS File opened	711	61.7
TOTAL	1,153	100.0%

FCS is currently working on clearer definitions of intake categories. For instance, the current intake procedure does not clearly define the differences among the categories of "file not opened", "single contact" and "phone contact".

For the same 11 month period during which the 1,153 cases noted in Tables 4 and 5 were recorded, there were 142 couples who were referred by the court specifically for mediation. Table 6 shows the ways in which these court referrals (couples, not individuals) were subsequently recorded.

These data indicate that slightly more than 3 out of 4 court referrals for mediation actually proceed at least to the first stage of mediation.

TABLE 6 FREQUENCY AND PERCENTAGE DISTRIBUTION OF COURT MEDIATION REFERRALS BY INTAKE OUTCOME: 06/85 TO 04/86

INTAKE OUTCOME	Number	Percentage
No file opened	25	17.6
One session only	6	4.2
Phone contact only	4	2.8
Mediation file opened	107	75.4
TOTAL	142	100.0%

2. Assessments

We examined FCS file data corresponding to clients completing Questionnaire #1 (262 cases for which files could be located) to determine in how many instances the court had ordered "assessment reports" to be completed and the nature of the referral. In 20 instances the court had ordered assessments prior to the commencement of our data gathering period; in 8 instances there was an "unconditional" order for assessment during our data gathering phase. Additionally, there were 51 "conditional" assessments ordered by the court, meaning if mediation does not result in agreement then an assessment report is to be prepared.

Among the 262 cases for which data are available, therefore, 28 (10.8%) had assessments ordered "unconditionally".

We have been informed that the courts have now ceased making "conditional" referrals for mediation based on information from counsellors that the practice is not conducive to mediation. Our data indicate that "conditional" referrals are more likely to refuse mediation -- 24.4% (11 out of 45) as compared with 9.1% (6 out of 66) of the court-referred cases for which data were available. If they did consent to mediation however, the "conditional" referrals were more likely to reach full or partial agreement -- 58.8% (20) as compared to 46.6% (28) for the "unconditionals". Stated another way, conditional court referrals who mediate are less likely to undertake mediation without reaching some agreement -- 41.2% (14) as compared to 53.4% (32) for the "unconditionals". These figures indicate trends only. Our data do not indicate any detrimental effect for conditional court referrals as measured by the ability of the litigants to reach mediated agreements.

3. Orientation

Of the clients completing Questionnaire #1, only 13 of the 282, or 4.6%, attended an orientation seminar. During part of the period in which we were intercepting clients, however, the seminars were discontinued. They have since been started up again. Therefore, we cannot indicate how many clients will choose to take advantage of seminars under circumstances of regular availability.

4. Mediation Series

Among those completing Questionnaire #1 179, or 63.5%, arrived at FCS for just one, their first, series of mediation sessions. Another 33 (11.7%) arrived for two series within our data gathering period with no prior series. (That is, the file was closed and reopened again for mediation within the data gathering period.) A total, therefore, of 212 individuals, or 75.2%, had no prior mediation at FCS.

There were additionally 43 individuals (15.2%) in our population who arrived at FCS having had a prior series of mediation sessions; an additional 6 individuals (2.1%) had had at least one prior series and also arrived for two series within our data-gathering period.

This means that at least 29% of those completing Questionnaire #1 had multiple series of mediation sessions and 17.3% had mediation series at FCS prior to completing our initial questionnaire. (Figures do not total 100% because of missing files or missing file information.)

5. Ancillary Counselling Before Mediation

Respondents were also asked if they had used other counselling services (not FCS) during the previous twelve-month period. About two-thirds had not done so. The remainder used a variety of services, most frequently in relation to their children (11.9%), marriage (9.2%), and personal counselling (8.9%), or some combination of those (32.4%).

6. Motivation

Questionnaire #1 asked clients to indicate their reasons for coming to FCS. Table 7 summarizes their responses. Since the respondents could mark more than one category the total does not equal 100%.

The reasons most frequently given for attending, in descending order, are:

(a) The children would stand to benefit. It might be argued that this reason was most frequently indicated as it is socially mandated to want to benefit one's children and, conversely, socially unacceptable not to claim such motivation. More than half of the respondents checked this item.

TABLE 7 PERCENT OF FCS CLIENTS INDICATING SOURCE OF MOTIVATION TO MEDIATE: QUESTIONNAIRE #1 *

Benefit to children	53.3
Lawyer recommended	47.4
Would help reach agreement	45.1
Judge or Master sent me	28.9
Need to talk	22.2
Save legal costs	17.5
Spouse wants me to	8.6
Someone else suggested	3.4
Other	3.5

* Multiple items checked therefore items do not total 100%.

(b) "lawyer recommended that I attend." This accords with our data from lawyers which indicates that most lawyers accept mediation as having potential benefit for most clients. Slightly fewer than half of the respondents checked this item.

(c) It would help my spouse and me to reach agreement. Our data indicate that slightly fewer than half of the respondents at this early stage are motivated to attend because of anticipated agreement on at least some issues.

(d) Court referred me. While 41.1% of our population was referred by the court (as indicated by FCS records) only 28.9% indicated court referral as a motivating factor for attending. It would appear that a substantial number of clients who were referred by the court do not view referral by court a major motivating factor. 53.9% (or 62 of 116) of those referred by the court indicated at this early stage that they knew attendance was not mandatory.

(e) Need to talk to someone about things. This category might be regarded as one of administratively "inappropriate" motivation since it seems to indicate a need for counselling rather than mediation per se.

(f) Will save legal costs. Only about 1 in 6 respondents indicated that they were motivated by the hope of saving legal costs. Some of the general literature on mediation suggests that this factor ranks high and ought to be impressed upon clients in the early stages of mediation. These data appear to question this assumption.

(g) Spouse wants me to attend. Fewer than 1 in 10 have indicated as a reason appeasement of one's spouse. This gives some support to the argument that few people may be coerced, at least by one's spouse, to mediate. On the other hand, it could be said that people are reluctant to admit to being manipulated by another even if they may be.

7. Impression of Compulsion

In response to the question related to client knowledge of the mandatory or otherwise nature of mediation, 61.9% of the total respondents knew that mediation was not mandatory. 26.9% were uncertain while 11.2% thought it was mandatory. There does appear to be very little difference in client-view of the mandatory nature of mediation in relationship to the source of referral. Of the respondents to Questionnaire #1, 14 or 12.2% of those referred by the court; 9 or 10.5% referred by lawyers and 6 or 10.2% of self-referrals considered that mediation is mandatory. We also compared those who indicated they were uncertain as to whether the law requires them to mediate and found relatively minor differences in the percentages of clients from the three referral sources. However, those referred by the court are most likely to think this way (39 of 115 or 33%); self-referrals are less likely to feel this way (15 of 59 or 25%) while those who have been referred by lawyers are least likely (16 of 86 or 19%).

8. Initial Encouragement from Lawyers

About 9 out of 10 of the respondents to Questionnaire #1 were represented by lawyers. Among those represented by lawyers, 71.6% said that their lawyers had indicated to them that they thought that mediation would be helpful. About 1 in 4 (23.2%) said that they did not know what their lawyers thought about the possible assistance of mediation. Only 5.2% said that their lawyers were pessimistic about the effect of mediation: that it would not help in the resolution of issues.

DELAYS IN SEEING A COUNSELLOR

One of the complaints of lawyers about the present mediation system is delay in obtaining an appointment with a counsellor. In order to examine this we obtained FCS file data available for those individuals responding to Questionnaire #1. We looked at the period of time between assignment to a counsellor as indicated in the files and the first contact with the counsellor. We deleted from this analysis "walk-ins" who, in most instances, made immediate contact with the mediator.

For 234 cases analyzed, the mean ("average") delay was 23.38 days; the median (middle point) was 19 days; and the mode (most frequent) was 22 days. The range was from 1 to 169 days. Therefore, it would seem that about 3 weeks delay is "normal" for all cases.

Among the cases that were court-referred (116) the mean and median are only slightly less.

For 146 cases referred by lawyers or self-initiated, 30% were seen within a week, 44% were seen within two weeks, 65% within three weeks, 77% within four weeks, 86% within five weeks, and 90% were seen within six weeks of assignment to a counsellor. In 12 cases (8.2%) the delay exceeded eight weeks.

SITUATION AT THE OUTSET

In our first Questionnaire we asked respondents to indicate the issues that they thought that they needed to resolve with their spouses (See Table 22.) The issue most often indicated (almost 9 out of 10 respondents) was that of visiting rights. Much less frequently listed (fewer than half of the respondents) were financial support for children, parenting decisions, and custody ("Who the children should live with"). Slightly fewer than a quarter of the respondents indicated that the division of marital property remained as an issue to be decided. About 1 in 5 respondents indicated that the payment of debts, financial support for a spouse, and/or occupancy of the family home were outstanding issues.

It appears, therefore, that most clients arriving at FCS for mediation have settled property and financial issues, or at least they do not regard them as issues in which they need to be involved directly. For them the child-related issues (including financial support for children) are the salient outstanding ones. Except for financial support for children, these are the issues within the mandate of FCS mediation.

Respondents were then asked which of the present unresolved issues they expected would be resolved with the assistance of the mediator. The rank ordering of the issues corresponds to their order of frequency as indicated above. (See Table 22.)

Clients are most optimistic with regard to the resolution of visiting rights. While 9 out of 10 indicated visiting rights as an unresolved issue, 8 out of 10 expected resolution. Slightly fewer than a third expected that financial support for children would be resolved (not within the scope of FCS mediation), but about 2 in 5 expected to resolve issues of parenting decisions and custody (properly within the scope).

About 1 in 10 respondents expected mediated resolution of financial and property issues: payment of debts, financial support for spouses, and/or occupancy of the marital home.

In descending order of frequency (as shown in Tables 8), respondents to Questionnaire #1 indicated the items that were problems to them as parents.

TABLE 8 PERCENT OF CLIENTS IDENTIFYING PROBLEMS WITH OTHER PARENT: QUESTIONNAIRE #1 *

QUESTION/PROBLEM		PERCENTAGE
1.	Spouse says bad things about me to children.	47.8
2.	Spouse not proper moral influence.	40.5
3.	Spouse may remove children from jurisdiction.	28.9
4.	Children do not like to be with spouse.	25.1
5.	Spouse shows no interest in children.	24.1
6.	Spouse not concerned with school/day care.	24.1
7.	Spouse doesn't deliver/pick up child. on time.	23.7
8.	Spouse too lenient with children.	21.3
9.	Spouse does not show love to children.	19.2
10.	Spouse does not provide proper meals to child.	14.8
11.	Spouse does not have child. ready for pick-up.	14.4
12.	Spouse does not provide proper medical care.	13.1
13.	Spouse will not cooperate in religious train.	11.0

* Multiple items checked therefore items do not total 100%

When asked to look back on the experience of their marriage and to give it a general "happiness rating", more than a third (36.8%) of the respondents said that their marriage was "very unhappy" or "usually unhappy." Slightly fewer (29.2%) indicated that the marriage was "50/50". About 1 in 5 (18%) said that their marriage was "usually happy" (15.8%) or "very happy" (2.1%).

Similarly, when asked to rate the marriage on "tension" between the spouses, about half (46.4%) said it was "very tense" or "usually tense"; about a quarter (24.1%) said it was "50/50", and about 1 in 10 (11.7%) said that it was "not tense" or "usually not tense."

Respondents were asked to check off items which best described their feelings at the moment about the marriage breakdown. The following table presents the percentage of respondents selecting each item and the rank order of items according to frequency of selection.

TABLE 9 PERCENT DISTRIBUTION AND RANK ORDER OF FEELINGS OF FCS CLIENTS TOWARDS FAMILY BREAK-UP: QUESTIONAIRE #1 *

FEELING	PERCENTAGE	RANK ORDER
Relieved	46.0	1
Sad	35.7	2
Depressed	27.1	3
Angry	26.5	4
Confused	24.1	5
Content	21.6	6
Indifferent	14.4	7
Frightened	14.4	7
Guilty	14.1	8

* Multiple items checked therefore items do not total 100%

RECONCILIATION

On the first Questionnaire respondents were asked two questions relating to their inclination to reconcile. They were asked first, if they wanted to "get back together as a married couple."

Then they were asked if they thought they will reconcile. Table 10 indicates the responses to each of these items.

A small minority want to reconcile and a very small number actually expect to reconcile. The assumption that those who reach the stage of actual or contemplated court action are generally beyond reconciliation is given support by these data.

TABLE 10 PERCENT DISTRIBUTION OF FCS CLIENTS DESIRING TO AND PREDICTION OF RECONCILIATION:QUESTIONNIRE #1

CLIENT RESPONSE	RECONCILIATION	
	DESIRE TO	PREDICT WILL
YES	13.1	2.7
NO	68.4	74.6
UNSURE	14.8	18.9
NOT ANSWERED	3.7	3.8
TOTALS	100.0	100.0

Table 14 shows that 8 individuals who completed Questionnaire #1 and who were interviewed four months after their FCS file was closed (N = 138) indicated that they had stopped going to FCS because they had reconciled. The FCS files however record 4 individuals as having reconciled, of whom 2 had begun the mediation process. Of the 8 clients interviewed who had reconciled, 6 indicated that they had begun mediation before reconciliation.

Among the 138 administered the follow-up interview 17 (12.3%) said they had already reconciled, 3 said they would presently like to reconcile, and 3 said they would probably reconcile in the future. Among the 17 who had reconciled by the time of the four month follow up, about half indicated that mediation had assisted reconciliation, mainly by improving the ability of the spouses to communicate. All but one of these cases had used counselling resources in addition to FCS to assist in the reconciliation.

Among the 138 interview respondents, 13 (9.4%) said that the mediator had encouraged them to reconcile.

MEDIATION SESSIONS

Table 11 summarizes information for 257 individuals for whom we were able to obtain FCS file data regarding the number of sessions (alone, joint, and/or with children) held during our data-gathering period.

TABLE 11 FREQUENCY AND PERCENT DISTRIBUTION OF FCS SESSIONS PER CLIENT: FCS RECORDS

SESSIONS	INDIVIDUALS	PERCENTAGE
One or Two	142	55.3
Three or Four	77	30.0
Five or Six	26	10.1
Seven to Nine	12	4.7
TOTAL	257 *	100.0

* Incomplete information for 23 cases

More than half of the cases are concluded in one or two sessions. More than 85% are concluded in four sessions or fewer. More than

95% are concluded in six sessions or fewer.

For 262 cases for which FCS file data are available, the total time spent in mediation sessions ranges from a minimum .5 to a maximum of 15.25 hours with the median being about 3.9 hours. The average length of each session is 90 minutes (median, mode, mean).

Of 262 individuals completing Questionnaire #1 and for whom FCS file data are available, 164 (62.7%) had at least one session alone with the mediator while 95 (36.3%) had no such sessions.

Table 12 shows that about 1 in 7 did not have any joint sessions. Most, however, went on to have one or two joint mediation sessions with their spouse. About 1 in 4 had more than two joint mediation sessions.

TABLE 12 FREQUENCY AND PERCENT DISTRIBUTION OF CLIENTS HAVING JOINT MEDIATION SESSIONS BY NO. OF JOINT SESSIONS:FCS RECORDS

SESSIONS	INDIVIDUALS	PERCENTAGE
None	38	14.8
One or Two	155	60.3
Three or Four	46	17.9
Five or Six	16	6.2
Seven to Nine	2	.8
TOTAL	257 *	100.0

* Incomplete data for 25 cases.

Among 260 cases for which data are available from FCS files, only 16 had mediation sessions where their children were included.

There were 12 individuals experiencing only one such session; 1 had two such sessions; 3 experienced three such sessions. Therefore, it would seem that the inclusion of children is relatively rare in the Winnipeg mediation process.

Additional information about the mediation experience was obtained in the follow-up interview (see Appendix C) of 138 of the respondents who were identified by the first Questionnaire. The telephone interview took place about 4 months after the FCS file was closed.

Table 13 shows the number of mediation sessions interview respondents recall attending. Discrepancies between reported sessions and the file data arise: Only 76.9% (as compared with 85.3% indicated by FCS file records for those answering Questionnaire #1) had four sessions or fewer; 41.4% (as compared to 55.3%) had one or two sessions. The difference between interview and file data could be due to several factors, or a combination of them, including the possibility that interviewees are not a representative subgroup, or the inaccuracy of either the file records or the memories of respondents.

TABLE 13 FREQUENCY AND PERCENT DISTRIBUTION OF TOTAL NUMBER RESPONDENTS RECALL ATTENDING: FOLLOW-UP INTERVIEW

SESSIONS	INDIVIDUALS	PERCENTAGE
One or Two	57	41.4
Three or Four	49	35.5
Five or Six	22	15.9
Seven to Ten	10	7.2
TOTAL	138	100.0

DURING MEDIATION

1. Ancillary Counselling

Of 138 clients responding to our follow up interview, 116 (84.1%) obtained no ancillary counselling since referral; 5 (3.6%) had marriage counselling; 6 (4.3%) had personal counselling; and 11 (8.0%) had a counselling with mixed objectives: personal, marriage, child adjustment.

2. Mediator Pressure

We asked interview respondents whether they felt "pressured" by their mediator in any respect. The great majority (121 or 87.7%) said they did not feel pressured; 6 indicated they felt pressure to conclude an agreement. Four (2.9%) respondents indicated that they felt pressure from the mediator to accept a joint custody arrangement; 5 felt pressure to accept a visiting arrangement. One respondent recalled pressure to accept the mediator's view of what was a proper agreement. One said she felt the mediator pushed a "male point of view."

These data appear to indicate that the complaint among some lawyers and judges that mediators pressure clients to accept particular sorts or arrangements, specifically joint custody, is either not well-founded or the pressure is so subtle so as to escape the awareness of clients.

3. Lawyer-Client Interaction

In the follow-up interview clients were asked whether they had contact with their lawyers just before or between mediation sessions. Of the 138 respondents, 23 (16.7%) had not met with their lawyers or were not represented; 51 (37%) had one contact;

45 (32.6%) had two or three contacts; 19 (13.7%) had 4 or more contacts with their lawyers. The great majority (83.3% or 115 out of 138) had met at least once with their legal counsel just before or between mediation sessions. That is not to indicate, however, that mediation was discussed in the course of these contacts between lawyer and client. The opposite is the case.

We also inquired of interview respondents whether or not their legal counsel had suggested "things you might do or say during mediation sessions." 102 or 88.7% of those who had contact with their lawyers could not recall that their lawyers had given them suggestions on conduct during mediation. Only 16 individuals (15.6%) who had contact with their lawyers said that their lawyers had made such suggestions.

This information appears to confirm that lawyers for the most part tend to take an "Observer" role with regard to the mediation process.

In our follow up interviews we asked respondents who had legal counsel once again what their lawyers' attitudes were toward mediation while mediation was proceeding. About 1 in 10 (9.94%) of the clients responding to this item said that they did not know what their lawyer's position was. Among the remainder, 95 (92.3%) indicated that their lawyers encouraged them (including 64 [61.6%] who said that their lawyers "strongly" encouraged them). So, while lawyers tend to adopt a "hands off approach", clients retrospectively perceive their lawyers by and large as being positive on mediation. Only 7 interview respondents indicated that their lawyers discouraged them from mediating and 5 thought their lawyers "indifferent" toward mediation.

4. Lawyer-Counsellor Interaction

We also examined the FCS files for 232 of the clients who completed Questionnaire #1 and who indicated that they were represented by legal counsel. We were interested in the extent to which counsellors had recorded contact with lawyers beyond the standard letter sent informing lawyers that an agreement had or had not been reached. Contact, if any, is generally in the form of telephone calls; occasionally a counsellor writes a letter. The files of 53 individuals (22.8% of those represented by lawyers) show "extra" contact. If our cases are representative, then counsellors have "extra" contact with lawyers in about 7 out of every 31 cases.

It was also noted in two instances (out of 262 for which files were available) that the counsellor had referred clients to legal counsel (i.e. not a specific, but a general referral).

5. Client Impressions of Mediation

Follow up interviews with those who mediate indicate that clients have largely favorable impressions of their mediators. Those responding agree or strongly agree that their mediator was "friendly and approachable" (89.8%), encouraged consideration of their children's interests (83.3%), listened to their opinions (81.1%), and clearly explained the choices available to them (76.1%). They also generally agree or strongly agree that their rights and obligations as parents were made known to them by the mediator (74.7%), and that the mediator helped the respondent to understand the viewpoint of his or her spouse (74.7%). Most disagree or strongly disagree (84%) that the mediator pressured them into accepting an agreement before they were ready, or that the mediator "took the other parent's side" (73.2%). Mediators are generally, therefore, highly regarded by their clients.

If we examine the items noted above in terms of negative response (percentages cited aggregate "disagree" and "strongly disagree", or "agree" and "strongly disagree", as appropriate), the most frequently noted is that rights and obligations of parents' were not adequately explained (17.4%). Similarly some (17.3%) indicated that choices were not clearly explained to them. Some (13.8%) believed that the mediator did not listen to their opinions or (13.7%) that the mediator was not of assistance in helping the respondent to understand the viewpoint of the other parent. Some (10.8%) felt pressured by the mediator into premature acceptance of an agreement; and a few (9.4%) did not regard their mediator as "friendly and approachable."

By and large clients expressed satisfaction with the setting and the scheduling of mediation sessions. The most frequent complaint (27.5% of the 138 interview respondents) concerned the convenience of location (the periphery of the downtown shopping and office district in Winnipeg). This is perhaps related to the problem of parking: 46.4% of the respondents regard parking as a problem including 21.7% who regard it as a "serious" problem. (The next most serious problem -- only 26.1% regard it as such -- is "taking time off work.")

TERMINATION

Of the 282 individuals completing Questionnaire #1, 38 (13.5%) refused mediation. The total included 116 cases referred by the court among whom 19 (16.4%) subsequently refused to mediate. These cases were effectively "terminated" before beginning the mediation process.

When we examined FCS files for the cases identified by Questionnaire #1, we discovered that reasons for termination are not always clear from the notes contained. Often reasons are multiple. There may be a mutual decision involving the mediator and the parties. In some instances the notations appeared to reflect the central influence of the mediator in terminating, e.g. "Mediation not appropriate forum for dispute settlement," or counsellor "gave up." But, no clear classification emerges.

In our follow up interviews with 138 clients we asked each to indicate their primary reason for termination. Table 14 shows the results in descending order of frequency.

TABLE 14 FREQUENCY AND PERCENT DISTRIBUTION OF PRIMARY REASON FOR TERMINATION GIVEN BY RESPONDENTS: FOLLOW-UP INTERVIEW

REASON	FREQUENCY	PERCENTAGE
Reached Mediated Agreement	43	31.2
Spouse refused to continue	28	20.3
FCS Mediation Not Helpful	24	17.5
Terminated by FCS Mediator	12	8.5
Reconciled	8	5.9
Respondent refused to continue	8	5.8
Other	7	5.1
With FCS assistance able to communicate with spouse alone	6	4.3
Went to Private Mediator	2	1.4
TOTAL	138	100.0

OUTCOME

1. Feelings

Table 15 compares the identification of "feeling words" about the marriage breakdown at the time of the initial measure as compared with the interview four months after file closing.

Assuming that the clients interviewed are a representative subgroup of those completing our initial questionnaire, then the foregoing statistics as outlined in Table 15 indicate that our respondents were much more "relieved and content" at the time of the follow-up interview. Although a little more angry, they were less "depressed" and less "confused" than they had been when they completed the initial questionnaire.

TABLE 15 FREQUENCY AND PERCENT CHANGE OF CLIENT FEELINGS ABOUT FAMILY BREAK-UP: QUESTIONNAIRE #1 AND FOLLOW-UP INT. *

	PERCENTAGES		
FEELINGS	(N=282) QUESTIONNAIRE	(N=138) INTERVIEW	% CHANGE
Relieved	46.0	65.3	+19.3
Sad	35.7	34.7	- 1.0
Depressed	27.1	19.0	- 8.1
Angry	26.5	33.1	+ 6.6
Confused	24.1	16.5	- 7.6
Content	21.6	48.8	+27.2
Indifferent	14.4	12.4	- 2.0
Frightened	14.4	13.2	- 1.2
Guilty	14.1	Not listed	

* Multiple items checked therefore items do not total 100%

2. Tangential Effects of Mediation

Table 16 indicates some of the tangential benefits of mediation as perceived by interview respondents. These benefits are listed in decreasing order of frequency.

These results indicate that the process of mediation serves the purpose of developing a better understanding of family law and court procedures while producing an understanding and improved communication between disputing spouses.

43.8% of the respondents regard mediation as producing the best possible result in their case. Although it could be suggested that another method could have achieved equal, if not better, results in some cases, a further insight is provided by answers to the question which asked respondents to indicate "the best way to resolve issues of custody and access". Mediation was most often listed as the single method of choice, 68 respondents, or 49.3%. Responses to this question (listed in descending order of frequency) are set forth in Table 17.

TABLE 16 PERCENT DISTRIBUTION OF CLIENT ASSESSMENT OF MEDIATION BENEFITS: FOLLOW-UP INTERVIEWS

RANK	BENEFIT	PERCENTAGE FREQUENCY
1.	Understand family law better	62.0
2.	Understand court procedure better	55.4
3.	Achieved best possible result in my case	43.8
4.	Understand other parent's concerns better	32.2
5.	Easier to communicate with other parent	31.4

* Multiple items checked - items do not total 100%

TABLE 17 PERCENT DISTRIBUTION AND RANK ORDER OF CLIENT ASSESSMENT OF BEST WAY TO RESOLVE CUSTODY/ACCESS: FOLLOW-UP INTERVIEWS

RANK	BEST WAY	PERCENTAGE FREQUENCY
1.	Mediation	49.3
2.	Any Means that Works	19.6
3.	Court	8.0
4.	Mediation and Court	6.5
5.	Mediation and Lawyers	5.1
6.	Yourselves	4.3
7.	Lawyers	4.3
7.	Court and Lawyers	2.2
8.	Yourselves or Court	.7
	TOTAL	100.0%

Mediation alone or in some combination was rated by 84 (60.9%) of interview respondents as the best way to resolve custody and access disputes. 23 respondents (17%) rate the court process alone or in combination with other methods as superior; and 16 (11.6%) rate lawyers alone or in combination with other methods as superior.

Interview respondents were similarly asked to give a general rating of the effect of the service received from FCS on their particular case. About 3 out of 4 (74.6%) said that the effect had been "very helpful" (36.2%) or "somewhat helpful" (38.4%). The remainder (25.4%) said that it had been "not very helpful" (6.6%) or "not helpful at all" (18.8%).

We ran cross tabulations to determine whether motivation for approaching FCS (see Table 7) is related to clients' general impressions. No matter what the motivation for going to FCS, clients rated the service as useful. For each reason for attending, over 60 percent of clients rated the service useful. There was though no pattern in the usefulness assessment by which people motivated by one purpose rather than another rated the service more or less useful. What may be most important in this is that no indication of disappointment in service is strongly associated with reasons for attending. Instead, clients generally assessed service to be useful no matter what their motivation to participate.

Asked whether they thought mediation had delayed the final resolution of their case, about two-thirds (66.1%) think that it did not; about a quarter (23.1%) believe that it did delay resolution; the remainder did not answer this item or they were uncertain.

We cross tabulated mediation outcome with client response on this item. Interestingly, clients who mediated and did not reach agreement are no more inclined to believe that mediation delayed final resolution than those who reached agreement.

4. Perception of Lawyers' Evaluations and Influence

Among those interview respondents who had legal counsel and who claimed to have some idea of how their lawyers evaluated their mediation experience, 49 (75.4%) said their lawyers thought mediation had been beneficial to their client, and 15 (24.6%) said their lawyer thought it of no benefit. One respondent said that the lawyer had mixed feelings.

When asked whether their lawyers had made it easier or more difficult for the respondent and his or her spouse to reach agreement (whether or not they had reached agreement), 67 of 112 (59.8%) responding said their lawyer had made it easier. Eight (7.1%) said their lawyer had made it more difficult. The remaining 37 (33.1%) said their lawyers had a neutral effect. The great majority (104 or 92.9%), therefore, see their lawyers as either benefiting resolution as between spouses or, at least, having a neutral effect.

5. Reaching Agreements

In some respects the "success" of mediation is the conclusion of an agreement between the parties with respect to some or all of the issues subject to mediation. We have hesitated to apply this concept of "success" to mediation terminating in agreement or partial agreement for at least two reasons: first, as some judges and lawyers have pointed out to us, a "successful" case might be regarded as one in which "justice" has been done for all concerned. A litigant may agree to a mediated compromise which does not necessarily meet the highest standards of "justice" including "the best interests of the children." Second, mediation which does not result in agreement on all issues (or any issues) may nonetheless be "successful" in terms of other measures such as the "intangible benefits" mentioned above, or the reduction of hostility between the parties.

With the qualification stated above, we have examined as one measure of "successful mediation" the extent to which FCS mediation has resulted in agreement or partial agreement and their correlates.

We examined data from several sources to determine the portion of cases in which total or partial agreement is the result.

We looked at FCS statistical summary sheets compiled each month from data provided by counsellors on their respective files. We examined sheets for a 24 month period for the calendar years 1985 and 1986. Table 18 sets forth the results for 790 mediation cases closed in this period. About 65% are reported to have been concluded by full or partial agreement.

TABLE 18 NUMBER OF MEDIATION CASES CLOSED BY OUTCOME AND YEAR: FCS FILES

OUTCOME	YEAR CLOSED		TOTAL	
	1985	1986	NUMBER	PERCENT
Total Agreement	188	171	359	45.44
Partial Agreement	66	86	152	19.24
No Agreement	158	121	279	35.32
TOTAL	412	378	790	100.00

As another measure of frequency of agreement we examined the FCS files for those individuals completing our initial questionnaire, who subsequently went on to mediate (38 cases who refused to mediate were omitted). Table 19 shows the results for this subgroup.

TABLE 19 FREQUENCY DISTRIBUTION OF CASE OUTCOMES FOR QUESTIONNAIRE #1 POPULATION: FCS FILE DATA

OUTCOME	Frequency	Percent
Total Agreement	94	42.3
Partial Agreement	20	9.0
No Agreement	108	48.7
TOTAL *	222	100.0

* Incomplete information 22 cases

A total of 51.3% of the cases examined resulted in full or partial agreement according to file records. This is 13.4% less than the rate for the 24 month period, 1985-1986 for all mediation cases (See Table 18).

A third indication of frequency of agreement comes from our interview data. Respondents were asked whether they had reached a full or partial agreement with the assistance of the FCS mediator. Table 20 sets forth the results for clients who reported that they sought agreement (N = 135).

TABLE 20 FREQUENCY AND PERCENT DISTRIBUTION OF CASE OUTCOMES FOR FOLLOW-UP INTERVIEW POPULATION: FCS FILE DATA

AGREEMENT	INDIVIDUALS	PERCENTAGE
YES	62	45.9
NO	73	54.1
TOTAL	135 *	100.0

* 3 cases who reported they had reconciled before reaching agreement omitted.

The percentage of interview respondents indicating that they have reached full or partial agreement as a result of FCS mediation is less that either the summary statistics indicator (Table 18) or the indicator compiled from FCS files (Table 19). A possible explanation for this discrepancy is that neither the population we identified through the device of the initial interception nor the subgroup of that population responding to interviews is representative. Another possible explanation is that closing notation in the file is accurate at the time it is recorded, but subsequently mediated agreements "fall apart". Therefore, four months after closing of a file (i.e. the time of our follow up interview) fewer clients are able to conclude that they have reached full or partial agreement as a result of FCS mediation.

In summary, the data from three sources which are somewhat discrepant, indicate that somewhere between 9 and 13 in every 20 cases (45% - 65%) where mediation is attempted result in full or partial agreement between the parties.

6. Correspondence between Agreement and Court Order

In instances where interview respondents indicated that they had arrived at a full or partial agreement through FCS mediation, we asked them if the subsequent court order, if any, reflected substantially the agreement. About two- thirds (66.8% or 20 respondents) said that it did; about a third (33.2% or 10 respondents) said that it did not.

Where the mediated agreement had been altered, we asked respondents to indicate who had changed it, the parties themselves or the judge. Only one respondent indicated that the judge had instigated the change. The others subsequently agreed to alterations with their spouses.

This indicates that in most instances a mediated agreement will be carried forward in substantially the same terms to become a consent order. Where changes are made they are almost always made with the agreement of the parties themselves.

7. Legal Costs

Our data do not permit us directly to measure the effect of mediation on legal costs. We did, however, ask our interview respondents who had received bills from their lawyers whether or not they considered the bill reasonable. Not quite a third of the respondents had received bills (66.1% or 91 individuals). Of these 53, or about 60%, thought the bill was reasonable and less than expected while 38, or about 40% considered it to be "too high".

There is no correlation between refusing mediation or outcome of mediation and the response to this item. Our data do not indicate, therefore, that clients who reach full or partial agreement through mediation are more or less satisfied with their legal costs.

8. Correlations between Reaching Agreement and Other Factors

We examined a number of relationships between reaching full or partial agreement as a dependent variable and a number of other possible factors.

(a) Mediator

On first glance there appears to be a relationship between the mediator assigned and the outcome of the case. FCS file records for 238 cases for which data were available indicate that mediators range in frequency of "full or partial agreement" from 28% to 60.5%. Refusal rates range from 4% to 37.5%. Rates of "no agreement' range from 23.7% to 68%.

Our interviews with counsellors lead us to believe that there is considerable discretion in recording a case as a "refusal to mediate" as opposed to "no agreement." Notwithstanding, there is considerable difference in the frequency of attaining full or partial agreement among the counsellors. These data give some weight to the suggestion by some lawyers we interviewed that counsellors vary considerably in their "effectiveness". Further research would be needed to determine whether these differences are consistent and not spurious.

(b) Number of Sessions

We examined FCS records for 257 cases identified by our initial questionnaire and for which data were available. Outcome is cross-tabulated with number of sessions (of all types) in Table 21.

TABLE 21 PERCENT DISTRIBUTION OF FCS CLIENTS BY OUTCOMES BY NUMBER OF MEDIATION SESSIONS: FCS FILE DATA (N = 257)*

TOTAL SESSIONS	Full or Partial Agrmnt	No Agt	Refused Mediatn	ROW TOTAL
One or Two	39.3	63.0	89.2	56.4
Three or Four	41.1	25.0	10.8	30.0
Five or Six	17.0	10.2	0.0	11.7
Seven to Nine	2.7	1.9	0.0	1.9
TOTAL	43.6	42.0	14.4	100.0

* Incomplete information for 25 cases

There is a statistical relationship between the number of sessions and reaching agreement. The relationship is not a simple one, however.

The modal number of sessions (of all sorts) is 2 for cases where full agreement is indicated. Where partial agreement is indicated the modal number of sessions is 4. In both cases the percentage of cases reaching full or partial agreement, respectively, declines. Only 22.9% of the cases where full agreement is indicated accomplished this in more than 4 sessions. Only 5% of the cases where partial agreement was accomplished did so in more than four sessions.

The modal number of sessions was 2 for cases where no agreement was reached. In 81.4% of such cases there were 3 sessions or fewer. In 15% of cases ending in no agreement, however, more than 4 sessions are recorded.

These data appear to indicate that reaching agreement is somewhat related to effort, however, there appears to be a point of diminishing returns around 3 to 5 sessions. In short, the more sessions that become necessary, the less chance of reaching an agreement.

A cross tabulation of outcome by total time spent in mediation shows a similar result. The point of diminishing return in terms of the number of hours is 3 to 5 hours. This is likewise the modal time spent in mediation by those who reached either partial or full agreement.

(c) Legal Aid

Among the 138 interview respondents 27 indicated they were receiving legal aid, 86 indicated they were not, and the remainder did not answer this item. We cross tabulated receipt of legal aid with mediation outcome. There is no significant relationship.

SITUATION AFTER FOUR MONTHS

Resolution of issues

Respondents to the initial questionnaire and in the follow up interview were asked to indicate the issues which remained unresolved. The comparative rank ordering by frequency is shown in Table 22.

The issue of spousal support relative to other unresolved issues is most likely to be noted by interview respondents. Visitation rights has moved down the scale. All of the other issues are in the same order of frequency. However, all of the issues except spousal support are less frequently indicated as being in need of resolution. Table 23 shows comparative frequencies at the two points in time.

TABLE 22 RANK ORDERING COMPARISON OF UNRESOLVED ISSUES: QUESTIONNAIRE #1 AND FOLLOW-UP INTERVIEW

UNRESOLVED ISSUE	QUESTIONNAIRE	INTERVIEW
Spousal Support	7	1
Child Maintenance	2	2
Parenting Decisions	3	3
Visitation	1	4
Custody	4	5
Division of Property	5	6
Payment of Debts	6	7
Occupancy of Marital Home	8	8

TABLE 23 COMPARISON AND PERCENT OF FCS CLIENTS INDICATING ISSUE ON QUESTIONNAIRE AND INTERVIEW WITH PERCENT CHANNGE

ISSUE	% OF CLIENTS LISTING ISSUE AT QUESTIONNAIRE %	INTERVIEW %	CHANGE
Spousal Support	17.2	30.6	+ 13.4
Child Maintenance	46.4	28.9	- 17.5
Parenting Decisions	45.4	24.0	- 21.4
Visitation	87.3	23.1	- 64.2
Custody	43.0	19.0	- 24.0
Division of Property	22.7	14.9	- 7.8
Payment of Debts	17.5	14.0	- 3.5
Occupancy of Marital Home	15.8	9.0	- 5.9

The issue of spousal support is more frequently indicated as one requiring resolution among the population interviewed four months after the closing of the FCS file. Every other issue is less frequently indicated as outstanding.

The greatest change is in access issues, a decline of 64.2% in frequency. This is followed by reductions in custody and parenting decisions. These three categories are, of course, the issues with which FCS mediation deals. One cannot assume, however, that mediation (or any other factor other than the mere passage of time) is a causal factor in narrowing the issues. Another item on the interview schedule asked respondents who indicated that the issues listed in Table 22 and Table 23 had been resolved how they had been resolved. (e.g. Parties themselves? Mediation? Lawyers? Court?)

Custody, access and parenting issues were most frequently resolved by the parties themselves and second most frequently by the court. The same order was indicated for occupancy of the marital home and the division of property. The payment of debts were as frequently resolved by the court as by the parties themselves. Support and maintenance were most frequently resolved by the court followed by the parties themselves.

Mediation was most frequently credited with the resolution of access, second most frequently with custody, followed in order by parenting decisions. In each of these areas mediation alone was credited with resolutions more frequently than were lawyers alone.

While mediation may not be the vehicle of resolution it may have moved the case down the road to resolution. Another interview item asked respondents to indicate for each of the issues listed in the previous Table, "Did mediation help you to get nearer to the solution?" Table 24 shows the results of this item.

TABLE 24 PERCENTAGE DISTRIBUTION OF FCS CLIENTS INDICATING MEDIATION CONTRIBUTION TO RESOLUTION OF SELECTED ISSUES: INTERVIEWS

ISSUE	Yes	No
Spousal Support	4.5	95.5
Child Maintenance	8.3	91.7
Parenting Decisions	43.0	57.0
Visitation	60.0	40.0
Custody	40.2	59.8
Division of Property	0.0	100.0
Payment of Debts	0.0	100.0
Occupancy Marital Home	1.7	98.3

* Multiple items were checked therefore items do not total 100%

In the estimation of the interview respondents mediation was most helpful in contributing to the resolution of visitation, parenting and custody issues -- those issues within the mandate of FCS mediation. With respect to parenting decisions and custody, however, there were more respondents who mediated who indicated that mediation was not of help than there were respondents who indicated that mediation was helpful.

These data tend to point to the fact that mediation, in itself, has a somewhat limited influence among a very complex set of factors governing the course of family law cases.

MAINTENANCE AND SUPPORT PAYMENT

Among the 116 cases referred by the court for mediation counselling and which we intercepted at FCS, 93 have in their court files interim or final court orders of child support and, in some cases, spousal maintenance. The mean (average) payment order is $158.00 per child per month. The range is from $25.00 to $400.00. The median (mid-point in the range) is $150.00 and the modal amount (most frequently ordered) is $100.00. (We cannot assume these cases are representative of all cases in which spousal maintenance and/or child support are ordered.)

The mean total amount per family (excluding spousal maintenance) for the 93 cases identified in current court files is $268.00; the median amount is $250.00 and the modal amount is $100.00.

In our follow up interview we asked respondents whether they were either receiving maintenance and/or support from the other parent for themselves or for their children: 51 either did not answer or answered in the negative; 77 were either paying or receiving; 72 of them provided us with information on quantum. Among 32 paying spouses the mean monthly payment is $312.00, the median is $300.00, the mode is $200.00, and the range is from $25.00 to $900.00. Among 40 receiving spouses the mean monthly payment is $289.00, the median is $200.00, the mode is $200.00, and the range is from $40.00 to $1,100.00 per month.

The 77 respondents receiving or paying were asked how many times in the past four months (the follow up period) they had been more than 10 days late in making or receiving payment, as the case may be. Table 25 shows the results.

TABLE 25 FREQUENCY AND PERCENT DISTRIBUTION OF FCS CLIENT ASSESSMENT OF MAINTENANCE/SUPPORT COMPLIANCE: 77 INTERVIEWS

COMPLIANCE ASSESSMENT	CASES	PERCENTAGE
No late or short payment	51	66.2
Payment late one time	4	5.2
Payment late twice	5	6.5
Payment late three times	1	1.3
Payment late four times	1	1.3
Late payment five or more times	15	16.9
Payments short, not late	2	2.6
TOTAL	77	100.0

Late payments average about 1.25 times per respondent.

About a quarter of the interview respondents paying or receiving maintenance and/or support indicated that they had paid or received less than the amount of maintenance or support ordered and/or agreed to, or that payment had been at least 10 days late one or more times. The Family Law Division of the Attorney General's Department, Province of Manitoba, indicates that the default rate for all maintenance cases administered by the Department's Maintenance Enforcement Program is approximately 25%. Our interviewees, therefore, appear to be representative in this respect.

We were also interested in determining whether or not, in instances where mediated agreements have been concluded, compliance is more frequent than in cases where there are no such agreements. One of the often heard justifications for mediation -- from lawyers, judges, mediators and evaluation literature -- is that a mediated agreement is one which, in all respects, is more likely to attract compliance. Some have suggested that this general effect will obtain notwithstanding that agreements on maintenance and support are beyond the mandate of FCS mediation. The reasoning is that if parents are content with custody and access arrangements they are more inclined to cooperate in other aspects of family law agreements or orders.

Our data indicate no notable relationship between reaching full or partial mediated agreements and maintenance compliance. In fact, the data indicate a tendency for those reaching a mediated agreement more frequently to report instances of default as shown in Table 26. FCS mediation does not, it would appear from our data, act to reduce default. Neither does a "self- help" mediated agreement. Manitoba has a unique system of maintenance enforcement. It may be that the Manitoba program is a major force in compelling compliance and that the effects of the program overshadow any influence that other factors, including mediation, may have.

Finally, we examined court files which were available for 93 of (of the 116 respondents who were referred by the court). We cross-tabulated these records of default with mediation outcome. Of the eight, two reached an agreement, four reached no agreement, while two refused mediation.

TABLE 26 PERCENT DISTRIBUTION OF PAYMENT COMPLIANCE BY MEDIATION OUTCOME FOR CLIENTS REPORTING RECEIVING OR PAYING MAINTENANCE/SUPPORT (N=73)

MAINTENANCE/ SUPPORT COMPLIANCE	MEDIATION OUTCOME				
	Full Agrmnt	Partial Agrmnt	No Agrmnt	Refused Mediatn	ROW TOTAL
No late payment	23.7	5.3	17.8	0.0	65.8
Late payment(s)	56.0	8.0	28.0	8.0	34.2
TOTAL	49.3	11.0	37.0	2.7	100.0

* Incomplete information for 4 cases

PROSPECTS OF RELITIGATION

It is contended that one of the benefits of mediation is to reduce the rate of relitigation of family law disputes. This is said to result from two factors: (a) the parents, through mediation, are more likely than by other means to arrive at a detailed agreement that is satisfactory to them and is therefore an agreement which has an enduring quality to it; (b) the parents open lines of communication and learn a method of dispute settlement which is useful to them either in subsequently reaching their own agreements or returning to obtain additional third-party mediation.

As pointed out by most judges and many lawyers who we interviewed, the present system in Winnipeg is too recent to determine whether it acts to reduce relitigation. We obtained subjective data on this matter from our 138 interview respondents.

Among the interview respondents 14.5% have already commenced court process to alter existing arrangements; 41.3% expect to have to resort to court action in future; and 3.6% said they "probably might" have to do so, but were not certain at this point. 40.6% see no further need for court process.

An examination of Table 27 suggests that there are relatively minor differences between those who mediated agreements and those who did not in respect to possible court action. However, although the differences are not statistically significant, clients who reach an agreement are less likely to anticipate court action over those issues under FCS mandate, namely custody (74.4% versus 61.0%) access (71.9% versus 56.1%) and "parenting decisions" (93.8% versus 82.5%).

Among those anticipating subsequent resort to court process, 32.0% anticipate problems with regard to custody, 32.0% anticipate visitation problems, and 9.6% anticipate problems regarding parenting decisions. As indicated above and in previous chapters, these are the issues within the mandate of FCS. These issues superseded all the others in frequency except that of child support: 33.9% anticipate problems in that regard.

We also asked interview respondents if they anticipate returning to FCS in future to resolve problems that may come up between parents. Slightly more than half (51.4%) said that they thought they would do so; 41.3% said they did not expect to do so. Of the remainder some said they might, but the other parent would not, that they would use resources other than FCS or they would use FCS services in combination with, or as an alternative to others.

TABLE 27 FREQUENCY AND PERCENT DISTRIBUTION OF RESPONDENTS NOT ANTICIPATING COURT ACTION FOR SELECTED REASONS BY AGREEMENT OUTCOME: FOLLOW-UP INTERVIEWS

NO COURT ACTION EXPECTED FOR:	REACHED AGREEMNT	NO AGREEMNT	REFUSED	ROW TOTAL
CUSTODY	47 73.4	25 61.0	6 60.0	78 67.8
ACCESS	46 71.9	23 56.1	9 90.0	78 67.8
PARENTING DECISIONS	60 93.8	33 82.5	10 100.0	103 90.4
CHILD SUPPORT	44 69.8	25 62.5	5 50.0	74 65.5
SPOUSAL SUPPORT	54 85.7	30 75.0	6 60.0	90 79.6
FAMILY HOME	62 96.9	35 87.5	9 90.0	106 93.0
PROPERTY	57 89.1	36 90.0	8 80.0	101 88.6
DEBTS	60 93.8	36 90.0	9 90.0	105 92.1

On the basis of the present data we are unable to determine conclusively one way or the other the effect of mediation on rates of relitigation.

VIII. "BEST INTERESTS OF THE CHILDREN"

The test most often applied in family law decisions respecting children is the "best interests test." Therefore, it is important when examining the impact elements of the family legal system to attempt to determine the effect of each element upon the best interests of children. Of course, the best interests test is subjective and indeed not easily incorporated or translated into social scientific research data. Notwithstanding, some of the data we examined in the course of completing this study touch upon the impact of marriage breakup and alternative methods of resolving dispute upon children as perceived by their parents.

We caution readers to keep constantly in mind that the information we have about the experience of children is largely through the vision of parents whose eyes may be clouded by the emotional trauma that accompanies the breakdown of a marriage and the consequent readjustment of roles. We know what parents report about their children; we have not observed the children in any way.

SUBJECT CHILDREN

Among 262 clients identified by the initial questionnaire and for which FCS files could be located the number of children per client is shown in Table 28. Bear in mind that among the 262 are many spouses who are parents of the same children. For this reason we coordinated the data to form a special set identifying each child. By this means we identified 309 subject children.

TABLE 28 FREQUENCY AND PERCENT DISTRIBUTION OF CHILDREN INVOLVED PER FCS CLIENT: FCS RECORDS

NUMBER OF CHILDREN	# CLIENTS	PERCENTAGE
One Child	104	39.7
Two Children	98	37.4
Three Children	52	19.8
Four Children	8	3.1
TOTAL	262 *	100.0%

* Files not available for 20 clients

Family size ranges from one to four children. In 77 percent of FCS cases, there are either one or two children effected. Very few cases involve more than three children.

ADJUSTMENT OF CHILDREN TO MARRIAGE BREAKDOWN

For each child we asked parents to indicate how well the child was coping with the marriage breakdown. We broke down responses by age ranges for the children. Table 29 compares responses at the time of the initial questionnaire with those from the interview conducted four months following the closing of the FCS file for different age groups of children.

The numbers are not large enough in any age category to do more refined comparisons -- such as a comparison between "mediating" and "non-mediating" parents. In general, however, the data presented in Table 29 shows that the relative adjustment of children (in the estimation of parents) improves with the passage of time. This improvement cannot be explained by our data. It may be due to such factors as: (a) parents tended to underrate children at first measurement; (b) parents tended to overrate coping at second measurement; (c) the passage of time healed;

(d) mediation focused attention on the needs of children.

TABLE 29 PERCENTAGE COMPARISONS OF PARENTS ASSESSMENT OF HOW WELL THEIR CHILDREN ARE COPING TO THE MARRIAGE BREAKDOWN BY AGE GROUPS.

PARENTS ASSESSMENT OF CHILD'S COPING:	TIME 1 QUESTIONNAIRE	TIME 2 INTERVIEW
AGE 1-5 (N=52)		
Very Well	26.9	53.8
Quite Well	36.5	21.2
Fair	26.9	15.4
Not Well	9.6	9.6
AGE 6-10 (N=73		
Very Well	34.2	35.6
Quite Well	26.0	35.6
Fair	27.4	23.3
Not Well	12.3	5.5
AGE 11-16 (N=59)		
Very Well	23.7	44.1
Quite Well	39.0	39.0
Fair	20.3	6.8
Not Well	16.9	10.2

Women were more positive in rating the coping of children (82%) than men (60%). This positive rating was likely due to the fact that children spend more time with their mothers. A rating of "fair" was given by 21.3% of the men and by 11.5% of the women. A rating of "not coping well" were fairly similar (10% of women versus almost 7% of men).

Those respondents reaching full agreement through mediation tend to view the child's capacity to cope more positively at the follow-up interview; only minor changes could be noted among those reaching partial agreement. A more positive assessment was made by those refusing mediation. We therefore cannot conclude that mediation has an impact on the adjustment of children.

PROBLEMS OF PARENTS

The data presented in Tables 30 compares the problems that parents report in relation to their children at two points in time: at the time of the initial questionnaire and in the follow- up interview. These reports can be taken as indirect indicators of the adjustment of children to the marriage breakup.

TABLE 30 PROBLEMS AS PARENTS, QUESTIONNAIRE #1 COMPARED TO FOLLOW-UP INTERVIEW *

QUESTION	MEASUREMENT QUESTIONNARIE	 INTERVIEW	% Change
Spouse says bad things about me to children.	47.8	45.5	- 2.3
Spouse not proper moral influence.	40.5	38.8	- 1.7
Spouse may remove children from jurisdiction.	28.9	21.5	- 7.4
Children do not like to be with spouse.	25.1	26.4	+ 1.3
Spouse shows no interest in children.	24.1	27.3	+ 3.2
Spouse doesn't pick up/deliver children on time.	23.7	35.5	+11.8
Spouse too lenient with children.	21.3	28.1	+ 6.8
Spouse not concerned enough with school/day care.	24.1	23.1	- 1.0
Spouse does not show love to children.	19.2	28.1	+ 8.9
Spouse does not provide proper meals to children.	14.8	25.6	+10.8
Spouse does not have children ready for pick up.	14.4	20.7	+ 6.3
Spouse does not provide proper medical care.	13.1	19.8	+ 6.7
Spouse will not cooperate in religious training.	11.0	15.7	+ 4.7

* Multiple items checked therefore items do not total 100%

One must bear in mind that the responses were elicited not only at different at times, but in different contexts. Respondents may be more inclined to identify an item as a problem in the context of a telephone interview than on a self-administered questionnaire. With this qualification, it appears from these data that the problems of parents do not diminish either with the passage of time or the intervention of mediation.

We also compared the reports of parents who mediated to partial or full agreement with those of parents who participated in mediation but who terminated without arriving at an agreement. We did this analysis for each of the listed items. Table 31 shows the number and percentages of parents NOT experiencing problems with the other parent by agreement outcome. Overall, the difference in views between agreement and no agreement might be considered relatively minor. The few exceptions suggest that parents with agreements report fewer problems in respect to the pick-up of children, the late return of the child and, to a lesser degree, the belief that one parent may "say bad things" about the other parent to the child. The refusal group demonstrates few differences but the numbers are too small to warrant discussion.

On the basis of these data we cannot conclude that mediation has an impact on children vis a vis the issues parents have with the other party relative to parenting the children.

TABLE 31 NUMBER AND PERCENTAGES OF PARENTS NOT EXPERIENCING SELECTED PARENTING PROBLEMS BY AGREEMENT OUTCOME: FOLLOW-UP INTERVIEWS

PARENTING PROBLEMS NOT INDICATED	AGREEMENT OUTCOME			ROW TOTAL
	REACHED AGREEMNT	NO AGREEMNT	REFUSED	
CHILD DISLIKES	39 66.1	26 72.2	7 77.8	72 69.2
IMPROPER MEALS	39 69.6	29 76.3	5 50.0	73 70.2
POOR MEDICAL CARE	44 74.6	30 85.7	7 70.0	81 77.9
TOO LENIENT	38 66.7	23 65.7	6 66.7	67 66.3
TOO STRICT	47 79.7	28 77.8	9 90.0	84 80.0
NOT ENOUGH LOVE	44 71.0	23 63.9	7 70.0	74 68.5
DISINTERESTED IN CHILD	40 67.8	26 72.2	6 60.0	72 68.6
NOT INTERESTED IN SCHOOL/DAYCARE	41 67.2	28 82.4	6 75.0	75 72.8
NO COOPERATION WITH RELIGION	44 80.0	29 85.3	6 75.0	79 81.4
CHILD NOT READY FOR PICKUP	45 80.4	22 66.7	6 66.7	73 74.5
CHILDREN RETURNED LATE	38 63.3	17 53.1	5 55.6	60 59.4
REMOVE CHILD FROM PROVINCE	49 79.0	27 75.0	5 55.6	81 75.7
SAYS BAD THINGS TO CHILDREN	34 55.7	14 37.8	7 70.0	55 50.9
IMPROPER MORAL INFLUENCE	32 55.2	21 60.0	6 60.0	59 57.3

PARENT-CHILD RELATIONSHIPS

We asked interview respondents to rate their relationship with their children in terms of the degree of closeness. Table 32 shows the breakdown of their responses. The high percentage of "very close" and "close" contentions must be considered predictable.

TABLE 32 FREQUENCY AND PERCENT DISTRIBUTION OF FCS CLIENT RATING OF THEIR CLOSENESS TO THEIR CHILDREN: FOLLOW-UP INTERVIEWS

Closeness	Frequency	Percentage
Very Close	91	75.2
Close	22	18.2
Somewhat Distant	3	2.5
Quite Distant	4	3.3
One close, one distant	1	.8
TOTAL	121	100.0%

The degree of closeness prompted the inclusion of questions eliciting parent's feelings about the amount of time each spend with their children. The responses would indicate that 104 of the 220 responding, or 47.3%, are satisfied with the amount of time being spent with the child. The follow-up interview showed a 41% (48 of 117) satisfaction rating. It should be noted that 52.7% originally wanted more time with the child, but by the time the follow-up interview was conducted 59% wanted more time.

In respect to the respondent's views on the other parent's time with their children, only very minor differences were observed. 90 of 162, or 55.6% were satisfied according to responses to the Questionnaire. 63 of 107, or 58.9%, expressed satisfaction by the time the follow-up interview was conducted. 25% wanted the other parent to spend more time with the children while 20% wanted the other parent to spend less time. These percentages were virtually unchanged at the time of the follow-up interview.

In the follow-up interview respondents were asked if they spent more time or less time with their children before they started mediation. We also asked about the time the other parent spent with the children.

TABLE 33 FREQUENCY AND PERCENT DISTRIBUTION OF FCS CLIENT RATINGS OF THEIR TIME AND TIME OF OTHER PARENT SPENT WITH CHILDREN BEFORE AND AFTER MEDIATION: FOLLOW-UP INTERVIEWS

TIME WITH CHILDREN	RESPONDENT		OTHER PARENT	
SAME TIME	(54)	44.6%	(43)	36.7%
LESS TIME	(47)	38.8%	(38)	49.6%
MORE TIME	(20)	16.5%	(16)	13.7%

Of the 67 clients who noted a change in their own time with children since mediation came into play, 47 (70%) reported they were spending less time with their children. 20 (30%) reported spending more time. In the case of the other parent, it can be seen that 38 (78%) of the 54 for whom changes were noted were spending less time with the children, with only 16 (20%) spending more time (Table 33).

The statistics emanating from a cross tabulation of respondents' satisfaction with time and that of the other parent with agreement outcomes indicates clients who reach an agreement are more likely to be satisfied with the time they have with their children (49.2%) than those who do not (29.3%). Similarly, when an agreement is in place, clients are more likely to be satisfied with the other parent's time (67.9%) than when it is not (48.6%).

RESOLUTION OF CUSTODY AND ACCESS

Among the 282 cases identified by our initial questionnaire, there are 93 cases for which there are corresponding current court files. In 72 of these the court had made either an interim or final order of custody by February 1987. The nature of such orders is indicated in Table 35.

TABLE 34 PERCENT DISTRIBUTION OF FCS CLIENTS RATING OF OWN AND OTHER PARENTS TIME SPENT WITH CHILDREN BY MEDIATION OUTCOME: FOLLOW-UP INTERVIEWS

CLIENT RATING OF TIME WITH CHILDREN	MEDIATION OUTCOME		
	FULL/PART AGREE	NO AGREE	REFUSED
RESPONDENT'S OWN TIME:			
SATISFIED	49.2%	29.3%	33.3%
WANT MORE	50.8%	70.7%	66.6%
(N=111)			
RESPONDENT'S VIEW OF OTHER PARENT'S TIME:			
SATISFIED	67.9%	48.6%	37.5%
WANT MORE	16.1%	21.6%	50.0%
WANT LESS	16.1%	29.7%	12.5%
(N=101)			

121 or 43% of the respondents to the initial questionnaire indicated that the issue of custody ("Who the children live with?") was in need of resolution.

Respondents in the follow up interview were asked if the issue of custody had been resolved and, if so, how satisfactory the resolution was in terms of the best interests of the affected children. Of the 138 respondents, 96 (69.6%) indicated that custody had been resolved. Of these 96 reporting a resolution, 82.3% reported that the present arrangement was either "very satisfactory" (38 or 39.6%) or "satisfactory" (41 or 42.7%). The remaining 17 (17.7%) said that the present custody arrangement is either "not satisfactory" or "very dissatisfactory."

246 (87.3%) of the 282 respondents to the initial questionnaire indicated that visitation arrangement remained unresolved.
In the follow up interview 91 (65.9%) respondents indicated that they had resolved the issue of access. Among these 71 or 78% said that present arrangements are either "satisfactory" or "very satisfactory" in terms of the best interests of the children.

TABLE 35 FREQUENCY AND PERCENT DISTRIBUTION OF DIFFERENT TYPES OF COURT CUSTODY ORDERS: COURT FILES

TYPE OF ORDER	FREQUENCY	PERCENTAGE
Sole custody to mother	47	65.3
Sole custody to father	6	8.3
Divided custody *	1	1.4
Joint custody, physical to mother	13	18.1
Joint custody, physical to father	2	2.7
Joint divided custody **	3	4.2
TOTAL	72	100.0

* Divided sole custody: different children to different parent
** Joint custody, divided physical custody

If the subgroup of interviewees is representative (which we do not say is so) then some combination of factors, including perhaps the mere passage of time in addition to other factors, has reduced the number of cases in which custody and access remain problematic. Similarly, among the interview respondents reporting resolution of other issues, they are generally satisfied with the resolution.

There is no appreciable difference in the level of satisfaction on any issue between those who have mediated to partial or full agreement and those who have not.

We cannot conclude from the data available to us that mediation has any impact on the level of satisfaction of the parties (in terms of their children's best interests) with custody or access arrangements, with arrangements with respect to making parenting decisions (issues within FCS mandate), or their general satisfaction with the resolution of issues not within the scope of FCS mediation.

MUTUAL RELATIONSHIP: CUSTODY AND MEDIATION

One interesting aspect of the data revolves around the types of agreement parents want in respect to their children. Specifically, parents were asked: (1) If they wanted a flexible type of arrangement where the child would be able to make unscheduled visits and contact with the non-custodial parent; (2) if both parents should be able to have some time with the child; (3) if both parents would be financially responsible for the children. Affirmative answers to these questions would signify parents were leaning towards a joint or shared-type of parenting. Such proved to be the case as shown in Table 36.

TABLE 36 COMPARISON OF FREQUENCY AND PERCENT DISTRIBUTIONS OF RESPONDENTS VIEWS ON SELECTED ITEMS RELEVANT TO JOINT PARENTING AS STATED AT INTAKE AND FOLLOW-UP

JOINT PARENTING ITME	QUESTIONNAIRE (N=205)		INTERVIEW (N=122)	
WANT UNSCHEDULED TIME	(205)	55.6%	(102)	56.9%
BOTH PARENTS HAVE TIME WITH CHILDREN	(239)	93.3	(122)	93.4
BOTH PARENTS FINAN. RESPONSIBLE FOR CHILDREN	(228)	89.9	(118)	88.1

None of the indirect measures of the impact of mediation on the "best interests of children" incorporated in this analysis show a major difference between those who use FCS to mediate to partial or full agreement and those who do not. As cautioned at the beginning of this chapter the information we have about the experience of children is through the eyes of parents. We had no direct contact with children. Future researchers may be able to make more accurate assessments through the eyes of the children themselves.

IX. CURRENT COURT DATA

After the period in which we intercepted mediation cases at the offices of Family Conciliation Services we examined corresponding current court files. We were able to locate files for 93 of the 116 individuals referred by the court. Data were extracted. In this section of the report we examine these data. Where the totals do not add up to 93 (100.0%) this is an indication that data are missing for some files.

PETITIONER/APPLICANT

The petitioner or applicant in 72 (77.4%) of the cases is the wife; in 21 (22.6%) it is the husband who is the petitioner or applicant.

AGE AT MARRIAGE

For husbands the mean age at marriage (i.e. most recent marriage) is 23.8 years, the median is 23 years and the mode is 21 years.

For wives the mean age at marriage is 21.4 years, the median 20 years, and the mode is 18 years of age.

MARITAL STATUS

At the time of the marriage subject to proceedings 74 husbands (79.6%) were single and 11 (11.8%) were divorced.

Among wives 80 (86%) were single at the time of marriage and 5 (5.4%) were divorced.

YEARS MARRIED

The parties have been married for anywhere from 1 year to 24 years with the mean being 9.8 years, the median 9 years and the mode 2 years.

EMPLOYMENT STATUS

Employment status as can be determined by an examination of court records as indicated in Table 37 for husbands and Table 38 for wives.

TABLE 37 HUSBAND'S EMPLOYMENT STATUS

STATUS	Frequency	Percentage
Unemployed	18	19.3
Emp full time	60	64.5
Seasonal emp	2	2.2
Not Known	13	14.0
TOTAL	93	100.0

TABLE 38 WIFE'S EMPLOYMENT STATUS

STATUS	Frequency	Percentage
Unemployed	36	38.6
Emp Part time	14	15.1
Emp Full time	22	23.7
Homemaker	2	2.2
Student	4	4.3
Not Known	15	16.1
TOTAL	93	100.0

INCOME

Where income can be determined from the court files the mean income for husbands is $23,074.62, the median is $20,272.00, and the mode is $18,000.00. The minimum is $3,600.00 and the maximum is $53,497.00.

The mean income for wives is $12,574.62, the median is $10,788.00 and the mode is $3,600.00. The minimum is $1,325.00 and the maximum is $39,360.00.

CHILDREN

The mean number of children identified as subject to proceedings is 1.73, the median is 1, and the mode is 1.

ISSUES

Custody is at issue in 63 (67.7%) of the cases. Access is at issue in 79 (84.9%).

LEGISLATION SUPPORTING APPLICATION/PETITION

The legislation under which relief is claimed for each of the 93 cases is indicated in Table 39.

TABLE 39 LEGISLATION UNDER WHICH RELIEF CLAIMED

LEGISLATION	FREQUENCY	PERCENTAGE
DIVORCE ACT	45	48.4
PROVINCIAL LEGISLATION ONLY	48	51.6
TOTAL	93	100.0

ORDERS

There was an order for spousal maintenance in only 3 cases ($200, $250, and $425 per month). (In 12 cases there are claims for spousal maintenance.)

In 47 cases there were orders for child support ranging from $25 to $400 per child per month. The mean quantum per child per month is $158.13, the median is $150, and the mode is $100.

In 10 cases there were orders combining spousal maintenance and child support. The mean for such orders is $620 per month, the median $500 and the mode $200. The range is from $200 to $1,200 per month.

There is no apparent relationship between quantum of child support and mediation outcome.

Home assessments were ordered in 13 of the 93 cases.

We examined 72 cases in which there was an interim or final custody order to determine whether there was any relationship between mediation outcome and the nature of the order. Specifically, we wanted to discover whether mediation agreements correlate with joint custody orders. There is no statistically significant relationship. Therefore, the criticism that mediation (or mediators) tends to bias the case in favour of joint custody is not substantiated by these data. One must bear in mind, however, that most of the orders we examined were entered prior to the commencement of mediation. Therefore, even if a relationship existed we could not conclude that mediation was per se a causal factor.

We also examined custody orders to determine if a relationship exists between which parent is awarded physical custody and mediation outcome. Once again, one must bear in mind that the custody order pre-dates mediation in most instances. This cross tabulation indicates that in cases where the father has custody of one or more children then the parents are more likely to refuse mediation. If they mediate they are more likely to terminate without concluding an agreement. These data tend in some way, albeit small, to discount the comment that mediation favours the interests of fathers.

DISCONTINUANCE

A Discontinuance has been filed in 3 of the 93 cases. This corresponds with information from FCS records that 4 cases terminated in reconciliation and information from 8 interview respondents that they had reconciled. The discrepancy in figures can be explained in part by delays in the filing of documents.

STAGE OF REFERRAL FOR MEDIATION

We examined the length of time between the date of filing of the originating document and referral for the mediation series at which we intercepted the client. The mean delay is 328 days and the median is 113 days. The mode is 12 days. These data must be qualified since some clients had been to FCS prior to the mediation series resulting in the inclusion in our population for analysis.

MEDIATION AND COURT PROCESS

We attempted to measure the influence, if any, of mediation on the demand for court services. This can only be done in rough fashion and indirectly such as by counting the numbers of contentious motions and consent orders. There are very few cases, however, and virtually no appropriate comparison groups. All cases in which custody and access are at issue are referred sooner or later for mediation.

Another confounding factor is that the cases we examined have been "in process" for varying lengths of time. One could expect that, other factors being equal, the longer the case has been at issue, the more likely that applications for orders will have been filed and the more demand will have been made on court resources. There are so few cases that it becomes impossible to build in statistical controls for the time factor.

1. Non-Consent Orders

One measure of the contentiousness of a case is the number of non-consent orders entered. 54 of the 93 cases (58.1%) have such orders in the file. There is a statistically significant positive relationship between refusal of mediation and/or mediation with no agreement on the one hand, and the number of non-consent orders on the other hand.

It seems likely, however, that the causal direction, if any, is that "contentiousness" (as indicated by non-consent orders) creates the effect (refusal to mediate or inability to reach agreement). The relationship is spurious: the result of the inability of a couple to agree.

In order to examine mediation as an effect upon contentiousness we examined the number of non-consent orders entered after mediation referral. There is no statistically significant relationship between mediation outcome and the number of non-consent orders. We hesitate to draw too much from this, however, since the cases are very few and the time period (four months) for follow up is so brief. There may, in fact, be a long term relationship and our measures may not be reliable.

2. Motions and Orders

As another measure of the demand for court time we examined the relationship between mediation outcome and the number of all motions and orders in the court files. There is no statistically significant relationship.

To refine this measure somewhat we examined the number of motions and orders following referral for mediation. Again, there is no statistically significant relationship.

There is a statistically significant relationship between mediation to full or partial agreement and the filing of consent orders. This relationship, however, is clearly spurious, since it is expected that such agreements will in due course be translated into consent orders. Similarly there is an inverse relationship between having custody and/or access at issue and concluding a mediated agreement. The relationship is obvious and expected.

3. Motions to Vary Final Order

In only 8 cases was there a motion in the file requesting variation of a final order or decree nisi. While there is a slight relationship in the direction opposite to that expected (5 such motions from couples who mediated full agreement), the relationship is not statistically significant and, even if it were, the numbers are so small that one anomalous case could create an aberrant result.

4. Mediation and FMA Applications

One of the specific research questions concerns the relationship, if any, between the number of consent orders made pursuant to the provisions of The Family Maintenance Act and mediation. The numbers were too few to permit analysis of this question.

5. Conclusion

Based on the data available to us mediation does not have any apparent impact on the court process. The data, however, are not sufficient to make definitive conclusions in this regard. Analysis of more cases over a longer period of time could yield contrary results.

X. "ARCHIVAL" DATA

In order to construct some sort of comparison with current court data we examined all of the Divorce Petitions filed in the Court of Queen's Bench ("QB") in calendar year 1983. Originally we had hoped to examine a sample of family law actions in both the QB and the Provincial Court (Family Division) in a period just prior to the establishment of the unified court. (For a history of the recent changes in jurisdiction see BACKGROUND section above.) The logistics and expense involved in doing so proved to be insurmountable. We settled on divorce actions since they are a constant aspect of the jurisdiction of the QB: petitions for divorce have always had to be filed in the QB alone while jurisdiction under most provisions of provincial family legislation has, before July of 1984, been shared.

While the comparison between these "archival" data and current court data are rough at best, they give the only indicator available for the impact of the changes that have recently taken place -- including adoption of the system of "automatic" mediation referral.

In the material following the data from 1983 are presented. Comparable figures from current court data, where available, are stated as "[N]".

PETITIONER/APPLICANT

The petitioner in 64 (37.6%) [22.6%] of the cases was the husband; the petitioner in 106 (62.4%) [77.4%] was the wife.

AGE AT MARRIAGE

For husbands the mean age at (most recent) marriage was 24.3 [23.8] years, the median was 23 [23] years and the mode was 21 [21] years.

For wives the mean age at marriage was 21.3 [21.4] years, the median was 21 [20] years, and the mode was 19 [18] years.

MARITAL STATUS

At the time of the marriage subject to divorce proceedings 154 (90.6%) [79.6%] were single and 16 (9.4%) [11.8%] were divorced.

Among wives 147 (86.5%) [86%] were single and 23 (13.5%) [5.4] were divorced.

YEARS MARRIED

The parties had been married anywhere from 1 [1] to 29 [24] years with the mean being 10.2 [9.8], the median 9 [9] years, and the mode 5 [2] years.

EMPLOYMENT STATUS

The employment status for husbands is presented in Table 40 and for wives in Table 41. Comparable Tables for current court data are presented above in Tables 37 and 38.

TABLE 40 HUSBAND'S EMPLOYMENT STATUS

STATUS	FREQUENCY	PERCENTAGE
Unemployed	31	18.2 [19.3]
Emp Part time	17	10.0 [2.2]
Emp Full time	101	59.4 [64.5]
Student	2	1.2 [0.0]
Not Known	19	11.2 [14.0]
TOTAL	170	100.0

TABLE 41 WIFE'S EMPLOYMENT STATUS

STATUS	Frequency	Percentage
Unemployed	42	24.7 [38.6]
Emp Part time	29	17.1 [15.1]
Emp Full time	66	38.8 [23.7]
Homemaker	8	4.7 [2.2]
Student	5	2.9 [4.3]
Not Known	18	10.6 [16.1]
TOTAL	93	100.0

INCOME

Where income could be determined from the court files the mean income for husbands is $22,489.44 [$23,074.62], the median was $20,000.00 [$20,272.00], and the mode was $30,000.00 [$18,000.00]. The range was $2,580.00 to $65,560.00 [$3,600.00 to $53,497.00].

The mean income for wives was $11,342.81 [$12,574.62], the median was $10,224.00 [$10,788.00] and the mode was $9,600.00 [$3,600.00]. The minimum was $684.00 [$1,325.00] and the maximum was $36,000.00 [$39,360.00].

CHILDREN

The mean number of children identified as subject to proceedings was 1.98 [1.73], the median was 2 [1], and the mode was 2 [1].

ISSUES

Custody was at issue in 123 (72.4%) [67.7%] of the cases. Access was at issue in 99 (58.2%) [84.9%] of the cases.

ORDERS

TABLE 42 COMPARATIVE NATURE OF COURT CUSTODY ORDERS -- ARCHIVAL AND CURRENT COURT BY PERCENTAGE

TYPE OF ORDER	1983	CURRENT
Sole custody to mother	59.3	65.3
Sole custody to father	12.6	8.3
Divided custody **	7.4	1.4
Joint custody, physical to mother	6.7	18.1
Joint custody, physical to father	7.4	2.7
Joint divided custody ***	5.2	4.2
Total	98.6*	100.0

* 1.2% no order

** Divided sole custody: different children to different parent

*** Joint custody, divided physical custody

For 1983 cases 19.3% were joint custody orders as compared to 25% for current court cases examined. In the circumstances, however, it cannot be determined if this difference may be due to chance, due to the fact that the groups compared are not truly comparable, or due to some unknown factor. Moreover, the difference and the groups compared are both small.

There was an order of spousal maintenance only in 9 (5.3%) of the cases.

In 77 (45.3%) there were orders for child support and in 27 (15.9%) of the cases there was a combined order of child support and spousal maintenance.

Home Studies [Assessments] were ordered in 29 (17.1%) [14.0%] of the cases.

MEASURES OF CONTENTIOUSNESS

1. Non-Consent Orders

In the presentation of current court data above we suggested the number of non-consent orders is a measure of the contentiousness of cases. 54 (31.8%) [58.1%] of the cases have substantive non-consent orders in the file. In view of the absence of comparability we hesitate to compare current and archival data except to note that no decline is evident.

2. Motions and Orders

A comparison of current and archival files in terms of the number of motions and orders was discarded in view of the fact that the cases have proceeded over substantially different periods of time.

3. Orders to Vary Decrees Nisi

There are motions to vary decrees nisi in 38 (22.4%) of the cases. Once again, comparisons with current court data were discarded for lack of comparability.

4. Conclusion

Comparisons with 1983 data proved to be of little value. Even where differences appear no causal relationship could be inferred.

XI. CONCLUSIONS AND COMMENTS

We began the empirical portion of this report with the presentation of a theoretical perspective. The theoretical perspective brought into focus the beliefs about mediation held by central actors in the family law system: lawyers and judges, mediators and clients. To a large extent, the beliefs of these persons about mediation, regardless of the validity of those beliefs, determine the operation of the system. Lawyers and judges refer clients and litigants for mediation in the belief that it has potential benefits to them and incidentally to the children of those clients and litigants. The parties to family law disputes accede in expectation of those same benefits. Mediators do not wait for empirical results to vindicate their craft. Our research looked both at the perceptions and expectations and at the results and client assessment thereof.

Our data do not support the conclusion that mediation has much relative impact as it is integrated into the Winnipeg system upon the trajectory or upon the final settlement of family law disputes.

The end results of our research leaves us with an apparent contradiction: While our data do not substantiate many of the usual claims made for mediation, most of the people directly affected by it are pleased with the system of mediation. They accept the process because the process is what they are involved in and what represents the focus of change. Mediation is preferred to adversary contest. There are several ways in which we might interpret this result. First, mediation, within the context of the family legal system, may be likened to a weak star in the galaxy. see the star one must have a telescope of sufficient strength. It may be that mediation has influence, but the system is complex and the influence is relatively small as compared to other factors. The research design we have used is not sufficiently refined to uncover its effects. Its effects are of such magnitude that only a powerful design reveals them. A larger sample, adequate comparison groups, quasi- experimental design, and a longer follow up time are more powerful design features that could have the effect of revealing the influence of mediation. Research of this sort is, of course, time consuming and costly. If it is the case that mediation's benefits are present but not dramatic, then persons such as lawyers, judges, counsellors and mediation clients -- being closer to the subject -- are aware of effects that our research has not picked up. Their general satisfaction is based on their intimate knowledge.

While the positive claims for mediation have been largely unsubstantiated by our data, so have negative claims such as the forcing of unreasonable compromise, illegitimate empowering of men, bias toward male interests and the disempowerment of women. Critics may argue that the injurious light of the "weak star" of mediation has not been seen, not just because of the weakness of the telescope, but because the telescope has not been directed to the proper location. One cannot find that for which one does not look. A research design which specifically attempts to reveal the negative impact of mediation may yet determine that negative effects do exist. Our research design was constructed neither to prove nor disprove the value of mediation. Instead, the design focused on operational questions applied to one model of mediation. By this approach, both positive and negative findings emerged. The negative findings revolve around what difference mediation makes vis-à-vis outcomes, participation rates, and compliance. Positive findings revolve around satisfaction of key actors with the philosophy and process of mediation.

A second way of conceiving of the contradiction cited above is to suggest that mediation truly does not have many of the positive effects which have been claimed for it. Our research results may be valid and reliable. Approaching the study using a more powerful design may yield similar if not identical results. Once again, to use our celestial analogy, mediation is a star which exists only in the minds of those to whom it beckons. If one accepts this premise then the judges, lawyers, counsellors and clients who believe that mediation "works" base their apprehension of results on faith alone, perhaps aided by some misperceptions. It would be presumptuous and disingenuous for us to conclude on the basis of a relatively inconclusive set of data that such is the case.

A third possibility is that the claims made for mediation are, in a sense, irrelevant. The justification for family mediation comes not in its technical effectiveness but in the process itself. This appears to us to be the most reasonable explanation as elaborated below.

In an article entitled "Conflicts as Property" (British Journal of Criminology 17 [January 1978], 1) Norwegian criminologist Nils Christie likens judges and lawyers, in fact the entire legal dispute settlement system, to "bandits". They steal people's "property" -- their interpersonal disputes -- and transform them into a commodity that fuels the legal system and enriches the incumbents. In the process the original parties to disputes are relegated to secondary roles. Discourse takes place according to rules and in an argot they do not understand. The family law system is the most heinous of bandits, if Christie's metaphor is apt, since it steals the most intimate and comprehensive disputes.

While Christie's analogy may have some merit, like any analogy, it can be stretched too far. Judges and lawyers are at least self-conscious "bandits". Family court judges would prefer to see themselves as decision makers of last resort, acting only when the parties are not capable of reaching agreement in timely fashion. And we have yet to encounter a judge convinced of his of her infallibility. Therefore, reassurance that every effort has been made to effect settlement will be welcomed by judges whether or not such efforts have empirically demonstrable technical efficiency. It would be nice if measures such as mediation were technically effective, but if they are not they have value nonetheless.

Similarly, lawyers in family matters are mindful of the emotional trauma of their clients and their own relative inability and that of the legal system to accommodate or alleviate client hostility and anxiety. If mediation gives the parties a forum to be heard by a neutral third party and to vent some of their hostility and anxiety, then mediation allows the lawyer greater freedom to play a more restricted and, in his or her view, a more professional role. Once again, mediation is justified even in absence of evidence of technical effectiveness.

Finally, our data indicate that clients are generally satisfied with the mediation process, but less salutary when asked questions about the specific contribution of mediation to the resolution of issues. Once again, to use Christie's analogy, through mediation they are returned to a pivotal role in the dispute settlement process: they become once again agents in their own cause. The feeling that they are victims of the dispute settlement process is diminished. Questions of technical efficiency do not circumscribe their evaluation of the mediation system.

Our data are clear in that mediation is perceived to be a positive and effective means of settling custody and access issues. Clients generally perceive mediation to have been a worthwhile experience. Judges, Master and lawyers largely support the concept and see advantages in mediation. Still, the satisfaction with outcome expressed by clients of mediated cases did not differ substantially from clients of non-mediated cases. Data indicate little difference in compliance with agreements between mediation and non-mediated groups.

It is the philosophy and process of the mediation concept which garner support more than making a major difference in outcome. In the long run it may be a better way.

In the LITERATURE REVIEW above we suggested that general technical effectiveness -- the positive claims for mediation -- remain unproven. Notwithstanding that however, mediation has taken on the characteristics of a social movement in North America. It has generated inter-disciplinary organizations of adherents (including the founding of Family Mediation Manitoba during the course of this study), the beginnings of an ideology (centred around child-caring) and a belief system (about the technical merits of mediation), and efforts by some to create a self-regulating profession of mediators (with formal codes of ethics). We suggest that the social movement of mediation can be explained in part by the appeals of mediation to those groups and individuals noted above. The basic attractiveness comes from what mediation as a process can do for people in their roles as judges, lawyers or parties to a dispute. Common sense dictates that the method ought to work as predicted. In the absence of a negative impact (and perhaps even then) mediation is likely to maintain its attractiveness. We suggest that this interpretation is consistent with our findings and may well be applied to much of the existing literature on mediation.

APPENDIX "A" - QUESTIONNAIRE #1

The Honourable A. C. Hamilton
Associate Chief Justice
Family Division

Her Majesty's
Court of Queen's Bench
for Manitoba

The Law Courts
Winnipeg, Manitoba, Canada
R3C 0V8

Dear Sir/Madam:

Re: Divorce and Family Mediation Research Study

The court is participating in a study, initiated by the Department of Justice, that will examine the effectiveness of the court-connected Family Conciliation Service. We are particularly interested in receiving comments from those who have been involved in custody and access disputes and have participated in the mediation process.

Sloan & Greenaway Consultants has been engaged to conduct the study. This letter is to ask that you assist them in their task. While the researchers will not use your name in any report, they will ask you to complete a questionnaire at this time and, at some time in the future, to respond to their follow-up enquiries.

If you agree to lend your assistance to the research that is being undertaken, will you please indicate your consent by signing a copy of this letter.

Thank you for considering this request. Your participation will be of great assistance to families experiencing difficulties.

Yours truly,

Date: ______________________

I agree to participate in the research project referred to in the above letter.

____

Please take a few minutes to fill out this confidential questionnaire. We are evaluating the effectiveness of different methods of resolving family disputes. This research, which is being sponsored by the Department of Justice, is part of a larger research project comparing family mediation services offered in four major Canadian centres.

We are interested in what influenced you to come to Family Conciliation Services, the type of problems you need to resolve, and the ones you think Family Conciliation will be able to help you with. At the end of your sessions, and again four months later, we will be interested in your assessment of the services you have received.

Any information you give us will be kept confidential. It will only be used for evaluation purposes and your name will not appear in any public reports or documents.

Please fill out this questionnaire without consulting anyone else; we are interested in your ideas. If you have any questions, please do not hesitate to contact us.

Sloan and Greenaway Consultants
c/o Social Planning Council of Winnipeg
412 McDermot Avenue
Winnipeg, Manitoba
R3A 0A9

Rick Sloan
Phone: 943-2561

Bill Greenaway
Phone: 582-7670 hp

1. **Why are you coming to Family Conciliation Services? (Please check as many as apply.)**

___ I think it will help my spouse and me to agree on things.

___ My spouse wants me to.

___ My lawyer recommended it.

___ A friend or relative (other than my spouse) suggested it.

___ The judge (or other court officer) sent me here.

___ I think it will benefit my child(ren).

___ I need to talk to someone about my family situation.

___ I think it might save me legal costs.

___ Other (e.g. referred by social worker or clergy.)

______________________________ (Please write in.)

____

2. **Have you attended Family Conciliation's orientation seminar? (Please check one.)**

___ Yes

___ No

___ Not Sure

3. **To the best of your knowledge, are all people who are seeking either a separation or a divorce required to go to Family Conciliation's mediation service? (Please check one.)**

___ Yes

___ No

___ Not Sure

4. Which of the following issues do you and the other parent need to resolve? (Please check either yes or no for each item.)

YES	NO	
___	___	Who the child(ren) will mainly live with.
___	___	Visiting arrangements for the child(ren).
___	___	Parenting decisions (e.g. schooling, religion, discipline, etc.)
___	___	Financial support for the child(ren).
___	___	Financial support for yourself or other parent.
___	___	Which parent will live in the family home.
___	___	Dividing your property (e.g. furniture, car, savings, etc.)
___	___	Paying your present debts.

Other (Please write in any other items you feel that Family Conciliation Services will help you resolve.)

____

____

5. Which of the following issues do you expect Family Conciliation Services will help you resolve?

YES	NO	
___	___	Who the child(ren) will mainly live with.
___	___	Visiting arrangements for the child(ren).
___	___	Parenting decisions (e.g. schooling, religion, discipline, etc.)
___	___	Financial support for the child(ren).
___	___	Financial support for yourself or other parent.
___	___	Which parent will live in the family home.
___	___	Dividing your property (e.g. furniture, car, savings, etc.)
___	___	Paying your present debts.

Other (Please write in any other items you feel that Family Conciliation Services will help you resolve.)

____

____

6. **Which of the following issues do you think will have to be settled by a judge? (Please check YES, NO, or UNSURE for each item)**

YES	NO	UNSURE	
___	___	___	Who the child(ren) will mainly live with.
___	___	___	Visiting arrangements for the child(ren).
___	___	___	Parenting decisions (e.g. schooling, religion, discipline, etc.)
___	___	___	Financial support for the child(ren).
___	___	___	Financial support for yourself or your spouse.
___	___	___	Which parent will live in the family home.
___	___	___	Dividing your property (e.g. furniture, car, savings)
___	___	___	Paying your present debts.

Other (Please write in any other issues concerning your marital disruption which you think will have to be settled by a judge).

____

____

____

____

7. **At present, are any of the following items a problem for you as a parent?**

YES	NO	NOT APPLICABLE	
___	___	___	The child(ren) do not like to be with their other parent.
___	___	___	The other parent does not provide proper meals for the child(ren).
___	___	___	The other parent does not give the child(ren) proper medical care.
___	___	___	The other parent is too lenient with the child(ren).
___	___	___	The other parent does not show love to the child(ren).
___	___	___	The other parent shows no interest in the child(ren).
___	___	___	The other parent is not concerned enough about the child(ren)'s day care program or schooling.
___	___	___	The other parent will not cooperate with the child(ren)'s religous training.
___	___	___	The other parent is not dependable about having the child(ren) ready when you pick them up.
___	___	___	The other parent is not dependable about picking up or returning the child(ren) on time.
___	___	___	The other parent may remove the child(ren) from the province.
___	___	___	The other parent says bad things about you to the child(ren).
___	___	___	The other parent is not a proper moral influence.

Other (Please fill in any other problems)

____

____

____

____

8. During your marriage, who made the big decisions?

______/	______/	______/	______/	______
Mainly Spouse	Often Spouse	Equally	Often Me	Mainly Me

9. Looking back, how would you rate the marriage on the following:

Happiness	______/	______/	______/	______/	______
	Very Unhappy	Usually Unhappy	50/50	Usually Happy	Very Happy
Tension	______/	______/	______/	______/	______
	Very Tense	Usually Tense	50/50	Usually Relaxed	Very Relaxed

10. How much control do you feel you have over events in your life?

______/	______/	______/	______/	______
Very Little	Little	Some	Quite a Bit	A Great Deal

11. Check each of the following words that best describes how you feel now about the marriage breakdown?

___ Angry ___ Relieved ___ Depressed ___ Indifferent

___ Frightened ___ Confused ___ Content ___ Guilty ___ Sad

12. Do you want to get back together as a married couple?

___ Yes

___ No

___ Uncertain

13. Do you think there is a possibility that you will get back together as a married couple?

___ Yes

___ No

___ Uncertain

14. In the following table, place the age of each child in the left column. Then, by checking the column to the right, indicate for each child how well they are coping with your separation right now.

WRITE IN THE AGE OF EACH CHILD	THE CHILD IS COPING:			
	Very Well	Quite Well	Fair	Not Well

15. How do you feel about the amount of time you spend with the child(ren)?

___ Satisfied
___ Want more time
___ Want less time
___ Do not know
___ Feel differently about different children

16. How do you feel about the amount of time the other parent spends with the child(ren)?

___ Satisfied
___ Want more time
___ Want less time
___ Do not know
___ Feel differently about different children

17. The next three questions concern the type of agreement you have, or would like to have.

YES	NO	UNDECIDED		
___	___	___	(a)	Do you want your child(ren) and the other parent to talk on the phone and have "unscheduled" visits?
___	___	___	(b)	Do you want your child(ren) to spend time with each parent?
___	___	___	(c)	Do you want each parent, if able, to be financially responsible for the child(ren)?

18. What is your lawyer's attitude towards mediation counselling?

___ I am not represented by a lawyer.

___ My lawyer thinks it will help.

___ My lawyer doesn't think it will help.

___ I don't know my lawyer's attitude.

19. Have you used any other counselling services during the last twelve months?

___ No

___ Yes (If "yes", please answer "b")

(b) What type of counselling service did you use?

___ Mainly for your marriage.

___ Mainly for your child(ren).

___ Mainly for your own personal problems.

Thank you for participating in our project. Your help is greatly appreciated and will be of great assistance to families experiencing difficulties similar to yours.

Please write your name, address, and phone number below so we can contact you after you finish your sessions with Family Conciliation Services.

NAME: ______________________

ADDRESS: ______________________

____

____

PHONE: ______________________

AGAIN, THANK YOU FOR YOUR COOPERATION.

APPENDIX "B" - QUESTIONNAIRE #2

Please take a few minutes to fill out this questionnaire. As part of continuous efforts to improve services available to people experiencing family problems we are studying the prcoess of mediation. There is no better information to help us understand how to improve services than what you and hundreds of other people encountering such problems can provide. We greatly appreciate your contribution of time in thinking about and answering the questions we have raised in this form. Your views are very important to the usefulness of this study.

Your indentity will be kept anonymous to everyone other than the researchers who must contact you later for a brief interview. Please answer all of the questions according to how you feel about and see things at this time.

Again, we thank you for your thoughts and assistance in this imortant study. If you have any questions, please do not hesitate to contact us.

Sloan and Greenaway Consultants
c/o Social Planning Council of Winnipeg
412 McDermot Avenue
Winnipeg, Manitoba
R3A 0A9

Rick Sloan
Phone: 943-2561 (office)
237-0182 (home)

Bill Greenaway
Phone: 586-9789 (office)
582-7670 (home)

1. Please rate the effect of Family Conciliation Services on your case by checking one of the following:

___	___	___	___
VERY HELPFUL	SOMEWHAT HELPFUL	NOT VERY HELPFUL	NOT HELPFUL AT ALL

2. Many people who are experiencing marriage breakdown have difficulty agreeing on who the child(ren) will mainly live with and on conditions of visiting the children. WOULD YOU RECOMMEND THAT PEOPLE EXPERIENCING PROBLEMS SIMILAR TO YOURS GO TO FAMILY CONCILIATION SERVICES? (PLEASE CHECK THE ONE BEST ANSWER).

___ Definitely, it would help most people.

___ It would probably help many people.

___ It would help only a few people.

___ It would be a waste of time for most people.

3. Since you began mediation sessions, have you spoken to your lawyer about mediation?

_____ No, I have not talked with my lawyer about mediation. (Please skip to Question #4).

_____ No, I do not have a lawyer. (Please skip to Question #4).

_____ Yes, I have talked with my lawyer about mediation. (Please answer (B) below).

(B) What is your lawyer's attitude toward your mediation sessions.

____ My lawyer generally felt the sessions were of benefit.

____ My lawyer generally felt the sessions were of no benefit.

____ I do not know my lawyer's attitude about the sessions.

4. Did Family Conciliation Services help you reach an agreement with the other parent on who the child(ren) will live with most of the time?

____ Family Conciliation Services has helped us reach an agreement.

____ We have reached an agreement without the assistance of Family Conciliation Services.

____ We have not reached an agreement.

5. Were you able to reach an agreement about the child(ren)'s visiting arrangements through Family Conciliation Services?

____ Family Conciliation Services helped us reach an agreement.

____ We reached an agreement without the assistance of Family Conciliation Services.

____ We have not reached an agreement.

6. Which of the following issues do you think that Family Conciliation Services has helped you with? (Check either yes or no for each item).

YES	NO	
___	___	Who the child(ren) will mainly live with.
___	___	Visiting arrangements for the child(ren).
___	___	Parenting decisions(e.g. schooling, religion, discipline, etc.)
___	___	Financial support for the child(ren).
___	___	Financial support for yourself or other parent.
___	___	Which parent will live in the family home.
___	___	Dividing your property (e.g. furniture, car, savings, etc.)
___	___	Paying your present debts.

Other (Please write in any other items you feel that Family Conciliation Services has helped you with.)

____

____

____

____

7. Which of the following issues do you think will have to be settled by a judge? (Please check YES, NO, OR UNSURE for each item).

YES	NO	UNSURE	
___	___	___	Who the child(ren) will mainly live with.
___	___	___	Visiting arrangements for the child(ren).
___	___	___	Parenting decisions (e.g. schooling, religion, discipline, etc.)
___	___	___	Financial support for the child(ren).
___	___	___	Financial support for yourself or other parent.
___	___	___	Which parent will live in the family home.
___	___	___	Dividing your property (e.g. furniture, car, savings).
___	___	___	Paying your present debts.

Other (Please write in any other issues concerning your marital disruption which you think will have to be settled by a judge).

____

____

____

____

8. **At present, are any of the following items a problem for you as a parent?**

YES	**NO**	**NOT APPLICABLE**	
___	___	___	**The child(ren) do not like to be with their other parent.**
___	___	___	**The other parent does not provide proper meals for the child(ren).**
___	___	___	**The other parent does not give the child(ren) proper medical care.**
___	___	___	**The other parent is too strict with with the child(ren).**
___	___	___	**The other parent is too lenient with the child(ren).**
___	___	___	**The other parent does not show love to the child(ren).**
___	___	___	**The other parent shows no interest in the child(ren).**
___	___	___	**The other parent is not concerned enough about the child(ren)'s day care program or schooling.**
___	___	___	**The other parent will not cooperate with the child's religious training.**
___	___	___	**The other parent is not dependable about having the child(ren) ready when you pick them up.**
___	___	___	**The other parent is not dependable about picking up or returning the child(ren) on time.**
___	___	___	**The other parent may remove the child(ren) from the province.**
___	___	___	**The other parent says bad things about you to the child(ren).**
___	___	___	**The other parent is not a proper moral influence.**

Other (Please fill in any other problems)

____

____

9. During your marriage, who made the big decisions?

____________ /	____________ /	________ /	________ /	________
Mainly Spouse	Often Spouse	Equally	Often Me	Mainly Me

10. Looking back, how would you rate the marriage on the following:

Happiness	______ /	__________ /	________ /	________ /	__________
	Very Unhappy	Usually Unhappy	50/50	Usually Happy	Very Happy
Tension	______ /	__________ /	________ /	________ /	__________
	Very Tense	Usually Tense	50/50	Usually Relaxed	Very Relaxed

11. How much control do you feel you have over events in your life?

____________ /	________ /	______ /	__________ /	______________
Very Little	Little	Some	Quite a Bit	A Great Deal

12. Check each of the following words that best describes how you feel now about the marriage breakdown?

__ Angry __ Relieved __ Depressed __ Indifferent

__ Frightened __ Confused __ Content __Guilty __ Sad

13. Do you want to get back together as a married couple?

___ Yes

___ No

___ Uncertain

14. Do you think there is a possibility that you will get back together as a married couple?

___ Yes

___ No

___ Uncertain

15. In the following table, place the age of each child in the left column. Then, by checking the column to the right, indicate for each child how well they are coping with your separation right now.

WRITE IN THE AGE OF EACH CHILD	THE CHILD IS COPING:			
	Very Well	Quite Well	Fair	Not Well

16. How do you feel about the amount of time you spend with the child(ren)?

__ Satisfied
__ Want more time
__ Want less time
__ Do not know
__ Feel differently about different children

17. How do you feel about the amount of time the other parent spends with the child(ren)?

__ Satisfied
__ Want more time
__ Want less time
__ Do not know
__ Feel differently about different children

18. The next three questions concern the type of agreement you have, or would like to have.

YES NO UNDECIDED

___ ___ ___ (a) Do you want your child(ren) and the other parent to talk on the phone and have "unscheduled" visits?

___ ___ ___ (b) Do you want your child(ren) to spend time with each parent?

___ ___ ___ (c) Do you want each parent, if able, to be financially responsible for the child(ren)?

19. Has child support been decided?

___ YES (Please answer B and C below)

___ NO (Please skip to Question #20)

___ UNCERTAIN (Please skip to Question #20)

B. IF YES, Are you to receive payments from the other parent?

___ YES

___ NO

C. Are you to pay the other parent child support?

___ YES

___ NO

QUESTIONS 20, 21, 22, AND 23 ASK FOR YOUR VIEWS ABOUT THE MEDIATOR, FAMILY CONCILIATION SERVICES OFFICE, AND PROBLEMS YOU MAY HAVE EXPERIENCED.

20. Please indicate how strongly you agree or disagree with the following statements. (INSTRUCTION: PLACE THE MOST APPROPRIATE NUMBER BESIDE EACH STATEMENT.

1 = STONGLY DISAGREE
2 = DISAGREE
3 = UNDECIDED
4 = AGREE
5 = STRONGLY AGREE

___ My mediator was friendly and approachable.

___ My mediator listened to my ideas and opinions.

___ My mediator clearly explained the choices for me to consider.

___ My mediator encouraged me to consider what would be best for the child(ren).

___ My mediator encouraged me to consider the child(ren)'s point of view.

___ My mediator helped me understand my rights and obligations as a parent.

___ My mediator helped me to understand the other parents' point of view and concerns.

___ My mediator tried to get the best result for me.

___ My mediator pressured me to accept an agreement before I was ready.

___ My mediator took the other parent's side.

21. The following items ask for your views of the time mediation

took, and, of the office surroundings and location.

WERE THE MEDIATION SESSIONS:

YES	NO	
___	___	at a convenient location?
___	___	at convenient times?
___	___	long enough to get things done?
___	___	enough, in number, to get everything done?
___	___	scheduled frequently enough?
___	___	held in a comfortable room?

22. When you were to attend mediation sessions, did you have problems with the following:

EXTENT OF PROBLEM:			
SERIOUS	MINOR	NONE	TYPES OF PROBLEMS:
___	___	___	TAKING TIME OFF WORK
___	___	___	FINDING A BABYSITTER
___	___	___	PAYING FOR A BABYSITTER
___	___	___	FINDING TRANSPORTATION
___	___	___	PAYING FOR TRANSPORTATION
___	___	___	FINDING PARKING
OTHER (PLEASE SPECIFY)			
___	___	___	______________________________
___	___	___	______________________________

23. Did your mediation sessions start on time?

____ Yes, most of the time.

____ No, seldomly.

24. Are you satisfied with the arrangements you have made for

each of the following:

SATISFIED		NO	
YES	NO	AGREEMENT	
___	___	___	Who the child(ren) will mainly live with?
___	___	___	Conditions for visiting the child(ren)?
___	___	___	Amount of control I have over school/ day care decisions for the child(ren)?
___	___	___	Amount of control I have over religious training of the child(ren)?
___	___	___	Amount of control I have over how the child(ren) will be disciplined?
___	___	___	Amount of financial support for yourself or the other parent?
___	___	___	Paying of your debts?
___	___	___	Dividing of your property?

25. Have you used other counselling services since you began your mediation sessions with Family Conciliation Services?

___ NO

___ YES, (IF YES, PLEASE ANSWER B)

B. What type of counselling service did you use?

___ Mainly for your marriage.

___ Mainly for your child(ren).

___ Mainly for your own personal problems.

Thank you for participating in our project. Your help is greatly appreciated and will be of great assistance to families experiencing difficulties similar to yours.

Please write your name, address, and phone number below so we can contact you later for a brief interview.

NAME ______________________________

ADDRESS ______________________________

PHONE ______________________________

AGAIN, THANK YOU FOR YOUR COOPERATION.

APPENDIX "C"

CLIENT FOLLOW-UP INTERVIEW

This interview schedule is to be administered to Family Conciliation mediation counselling referrals approximately 4 months following termination or refusal.

PART I - For clients who have gone at least one time to Family Conciliation Services for mediation counselling. If client was referred to mediation by the court, but did not go, go directly to Part II.

I am an interviewer working through a contract with the Government of Canada on a study having to do with the family law system. You may remember when you went to Family Conciliation Services for counselling that you were told that someone would be calling you and you indicated that we could count on your cooperation. If this is a convenient time for you I would like to take about 15 to 20 minutes of your time to ask you a few questions. If it's not a good time right now, I can arrange a time to call you back.

1. How many counselling sessions did you attend? ☐

2. For which of the following reasons did you stop going?

☐ You (continued with/went to) a private mediator
Which one:
☐ You got back together as a married couple
☐ You reached full agreement on custody and access
☐ The other parent and you both decided that you weren't getting anywhere through mediation counselling
☐ The other parent refused to continue
☐ Your counsellor terminated counselling sessions
☐ You refused to continue - State reason below:
☐ Other - state:

3. If interviewee does not indicate above that full agreement was achieved, ask: Did you reach a partial agreement through mediation?

☐ Yes ☐ No

4. If there was full or partial agreement, ask:

Was the Court Order or Decree the same as you agreed to in mediation?

☐ Yes ☐ No ☐ No court determination since agreement

5. If "No", how was it changed?

☐ By parties reaching new agreement on their own
☐ By lawyers reaching new agreement
☐ By the Judge
☐ Other:

5a. In what way was it changed:

6. Since the completion of your first (first series of) mediation counselling session(s) have you and the other parent returned for more mediation counselling?

☐ Yes ☐ No

7. If "yes" to 6, Where?

☐ Family Conciliation Services

☐ Private service - which one:

8. Do you think that you might go back in the future?

☐ Yes ☐ No

9. If "yes" to 8, Where?

☐ Family Conciliation Services

☐ Private service - which one:

10. Did your mediation counsellor encourage you to get back together as a married couple again?

☐ Yes ☐ No

11. Did you meet with your lawyer just before or between mediation counselling sessions?

☐ Yes ☐ No ☐ Not represented by lawyer

12. If answer to 11 is "Yes" ask: How many times ☐

13. If answer to 11 is "Yes" ask: Did your lawyer suggest to you things you might do or say during mediation sessions?

☐ Yes ☐ No ☐ Can't remember

14. Did your Mediation Counsellor pressure you into an agreement on any issue?

☐ Yes ☐ No

14a. If so, What was the agreement and what was the issue?

(GO DIRECTLY TO NEXT NUMBERED ITEM)

PART II - Start here for cases in which client was referred for counselling, but did not attend

I am an interviewer working through a contract with the Government of Canada on a study having to do with the family law system. We got your name through Court records. If this is a convenient time for you I would like to take about 10 to 15 minutes of your time to ask you a few questions. If it's not a good time right now, I can arrange a time for me to call you back.

(ASK ALL RESPONDENTS)

15. Are you presently back with the other parent living as a married couple again?

☐ Reconciled ☐ Not reconciled

(If answer to 15 is "Yes")

16. Did mediation counselling assist you in reconciling?

☐ Yes
☐ Went to mediation counselling but did not assist
☐ Did not go to mediation
☐ Uncertain

16a. If "yes", how?

17. If "yes" to item 16, Which mediation service?

☐ Family Conciliation Services
☐ Private mediator (Which one:)

(For reconciled interviewees, terminate interview at this point and thank the interviewee for his/her assistance.)

For each of the following issues

18. Determine whether or not each identified issue has been fully resolved at this time and **CHECK OFF** those that have

19. How it was resolved
(Code by number as follows:

1. By agreement reached through mediation counselling
2. By discussions between the parties other than (or after) mediation counselling sessions
3. Negotiation between lawyers
4. By final court order or decree nisi)

20. Whether mediation "HELPED" to get nearer resolution of the issue? CHECK off for "Yes" and "N/A" for "no mediation"

21. For each issue "resolved" ask How satisfied are you with the present arrangement? Code as follows:
(1) VERY SATISFACTORY, (2) SATISFACTORY,
(3) NOT SATISFACTORY, (4) VERY DISSATISFACTORY

ISSUE	18. RESOLVED	19. HOW RESOLVED?	20. MEDIATION HELPED?	21. LEVEL OF SATISFACTION
Who children mainly live with	☐	☐	☐	☐
Visiting arrangements	☐	☐	☐	☐
Parenting decisions	☐	☐	☐	☐
Child support	☐	☐	☐	☐
Spousal support	☐	☐	☐	☐
Occupancy of marital home	☐	☐	☐	☐
Division of property	☐	☐	☐	☐
Payment of present debts	☐	☐	☐	☐

22. Are there any issues not mentioned above that still have to be resolved? State:

23. Do you expect to have to go to court in the future to make changes to any of the arrangements that have presently been agreed to or determined by the court?

☐ Motion to vary planned or filed already
☐ Expected some time in future
☐ Foresee no future need for court appearance

24. About what?

☐ Custody
☐ Access
☐ Maintenance
☐ Other - state:

25. Which of the following are problems for you as a parent? (CHECK for "yes" and mark N/A if "not applicable".)

☐ a. Children don't like to be with their other parent
☐ b. Other parent does not provide proper meals
☐ c. Other parent does not provide proper medical attention
☐ d. Other parent is too lenient with the child(ren)
☐ e. Other parent does not show enough love to child(ren)
☐ f. Other parent shows no interest in the child(ren)
☐ g. Other parent not concerned enough about day care or schooling
☐ h. Other parent does not cooperate with the child(ren)'s religious training
☐ i. Other parent is not dependable about having child(ren) ready when you pick them up
☐ j. Other parent not dependable about picking up or returning the child(ren) on time
☐ k. Other parent may remove child(ren) from the province
☐ l. Other parent says bad things about you to the child(ren)
☐ m. Other parent is not a proper moral influence

Any other problems as a parent - state:

26. How would you rate your present relationship with your child(ren)?

☐ Very Close
☐ Close
☐ Somewhat distant
☐ Quite distant

27. How old are your children (Identify each child, subject to present proceedings only, by age in the appropriate spaces below)

Then for each child, ask: How well is your __ year old coping with your marriage breakdown at the present time?

Age Well	Very Well	Quite Well	Fair	Not at all
____yrs	☐	☐	☐	☐
____yrs	☐	☐	☐	☐
____yrs	☐	☐	☐	☐
____yrs	☐	☐	☐	☐

The next series of questions deals with the amount of time each parent spends with the child(ren). Would you say "yes" or "no" to the following:

28. You spend about as much time with your child(ren) as you did before your marriage breakdown.

☐ Yes ☐ No ☐ Uncertain

29. You would like to have more time with your child(ren).

☐ Yes ☐ No ☐ Uncertain

30. You would like to have more time on your with own without your child(ren).

☐ Yes ☐ No ☐ Uncertain

31. The other parent spends about as much time with the child(ren)as he/she did before the marriage breakdown.

☐ Yes ☐ No ☐ Uncertain

32. You would like the other parent to spend more time with the child(ren).

☐ Yes ☐ No ☐ Uncertain

33. You would like the other parent to spend less time with the child(ren).

☐ Yes ☐ No ☐ Uncertain

34. People involved in separation and divorce sometimes use the following words to describe their feelings. Which of the following words describes how you presently feel about your marriage breakdown?

☐ Angry ☐ Relieved ☐ Depressed ☐ Indifferent
☐ Frightened ☐ Confused ☐ Content ☐ Sad

35. Since the time that you first (went) (were referred to) Family Conciliation Services have you been represented by a lawyer?

☐ Yes ☐ No

(IF INTERVIEWEE ANSWERS "NO" TO ITEM 35, PROCEED TO ITEM 42 BELOW)

36. How many lawyers have you had in this period of time? ☐

37. Have you discussed with your present (or last) lawyer who the child(ren) should live with and the matter of visiting rights?

☐ Yes ☐ No ☐ Don't remember

38. Which one of the following statements would you say is true about your present (or last) lawyer's attitude toward mediation?

Your lawyer
- ☐ strongly encouraged you ...
- ☐ encouraged you somewhat...
- ☐ discouraged you ...
- ☐ strongly discouraged you ...
- ☐ was indifferent ...
- ☐ Did not discuss with lawyer whether should or should not participate in mediation counselling.

39. Would you say that your present (or last) lawyer made it easier or more difficult for you and the other parent to reach agreement?

- ☐ Easier
- ☐ More difficult
- ☐ Neutral

40. Did you receive Legal Aid (for the matter in question)?

☐ Yes ☐ No

41. (If answer to 40 is "No") If you have received your current (or last) lawyer's final billing, do you think that:

- ☐ It was too high
- ☐ It was a reasonable amount
- ☐ It was less than you expected
- ☐ Final billing not yet received

Now, I would like you to compare your present situation with the way things were before you went to (were referred to) mediation counselling. Which among the following statements would you say is true?

42. You find it easier now to talk to the other parent about problems you have to resolve.

☐ True ☐ False ☐ Uncertain

43. You find that you understand the other parent's concerns better now.

☐ True ☐ False ☐ Uncertain

44. You find that you understand the court procedure better now.

☐ True ☐ False ☐ Uncertain

45. You find that you understand the law relating to your family situation better now.

☐ True ☐ False ☐ Uncertain

46. You feel that you have achieved the best possible result in your case.

☐ True ☐ False ☐ Uncertain

MAINTENANCE

47. Are you required to make payments to the other parent either for the parent's maintenance or for child support?

☐ Yes ☐ No

48. If "yes", how much each month? ¦$____________¦

49. Is the other parent required to make payments to you either for your maintenance or for child support?

☐ Yes ☐ No

50. If "yes", how much each month? ¦$___________¦

(If interviewee answers "No" to both 47 and 49, skip to 52)

51. How many times in the last four months have (you) (the other parent) been more than ten days late in making payments [to the court, if required to pay to the court or to (you) (the other parent), if required to make payments directly]?

☐ 0 times ☐ 1 time ☐ 2 times ☐ 3 times
☐ 4 times ☐ More than four times

52. Do you think that the fact that (your case was referred) (you went) for mediation counselling delayed the final resolution of your case?

☐ Yes ☐ No ☐ Uncertain

53. Do you think that all couples undergoing separation or divorce and who have dependent children should have to go for mediation counselling?

☐ Yes ☐ No ☐ Uncertain

The following item is only for interviewees who did not attend any Family Conciliation Services mediation counselling sessions

54. For which of the following reasons did you chose not to go to Family Conciliation Services for mediation counselling?

☐ The other parent refused to go
☐ It was too inconvenient for you to get there
☐ You did not think that it would be worthwhile
☐ You were afraid of the other parent
☐ You went to a private mediator - (ask questions in Part I)
Which one:

☐ Other:

APPENDIX "D"

Methodology, Population Characteristics, Interview Guide - Counsellors

METHODOLOGY

Each of the counsellors present in the unit during the period in which clients were tracked through the system was interviewed. The interviews were conducted by one of the principal investigators. All of the interviews, with one exception, were conducted in the offices of the counsellors at FCS. The remaining interview (with a counsellor on maternity leave) was conducted over the telephone. A "Guide" (see below) constructed with the assistance of the Advisory Committee was use to structure the interviews. Each interview took between one and a quarter and one and three-quarter hours.

In addition the Director of FCS was interviewed with respect, among other matters, to policies and procedures concerning mediation in place at relevant times.

CHARACTERISTICS

Each of the counsellors maintains for administrative purposes an updated curriculum vitae. C.V.'s for five of the six counsellors interviewed were obtained. From these the following points can be made:

1. Two of the six came to FCS from the Conciliation unit previously attached to the Provincial Judges Court (Family Division). One of these has extensive experience in other social work settings including medical, corrections and rehabilitation.

2. Two of the workers have a background of experience mainly in the area of child protection services.

3. None of the workers had "specialist" training as mediators prior to being employed in the unit.

4. One of the workers did field practice in the unit as a social work student and was employed upon attaining the BSW degree.

5. Among the workers is a variety of experience; in addition to the two workers "inherited" from the Provincial Judges Court unit only one of the remainder comes from a prior position as a marriage and family life counsellor.

6. Two hold the MSW degree, three hold a BSW, and the other has a BScN plus specific training, not to the point of earning a degree, at the university level in marriage and family life counselling.

7. Three of the workers began their employment in FCS in 1984; the other three began in 1985.

INTERVIEW GUIDE

The following matters were covered in each of the interviews. The questions were, for the most part, asked in the order in which they appear and in the form in which they appear.

ORIENTATION AND TIMING

How do you introduce clients to mediation?
- What points to you emphasize consistently?
- Do you use aids such as a written checklist?

Some people have said that "timing" is important. Is there a proper time to mediate?
- Does the present system accomodate "proper timing" in your experience?

NATURE OF COUNSELLING

The literature describes a number of models, types and styles of mediation. How would you describe your approach?

Do you often bring children into counselling sessions? When? How often?

Do you use individual as well as joint sessions? What circumstances? How often?

How long does it usually take you take determine and prognosis?

On average how many sessions to you have with each couple?

What is the ideal number of sessions?

What is the average length of time between sessions? Ideal?

What is the average length of time from beginning to end? Ideal?

RECONCILIATION

Do you generally check with clients to see if the marriage is really over? If so, how and when do you do so?

What do you do if you determine that the marriage is not really over?

What do you do if it is apparent during the course of your contact with a couple that they want to get back together again?

In your view, are there adequate social services available for a couples who want assistance in preserving their marriage?

REFERRALS OUT

In your view are there adequate social services available to separating and divorcing couples in Winnipeg? Probe for specifics.

Do you ever refer couples for private mediation counselling? Under what circumstances? Where?

SCOPE

Are you satisfied with the present limitation on the scope of mediation, that is, limitation to the issues of what lawyers refer to as custody and access?

Do you often find it necessary to refer to financial and property issues in the course of mediation?

How fequently do you encounter cases of spousal abuse in the course of counselling?

- How do you deal with it?
- What is the Court's expectation in this regard?

How frequently do you encounter instances of child abuse in the course of counselling?

- How do you deal with it?
- What is the Court's expectation in this regard?

How frequently do you encounter cases where there is a "power imbalance" between the parties? How do you deal with it?

INTERACTION WITH LAWYERS

To what extent are lawyers involved once mediation is underway?

What, in your view, is the proper role for lawyers to play while mediation sessions are underway?

- On what topics should you have discussions with lawyers, and
- on what topics should you not have discussions with lawyers.

Do lawyers generally conduct themselves as you think they should? Describe.

Are some lawyers (or groups of lawyers) easier/more difficult to deal with?

Do you ever (often) initiate contact with lawyers with regard to on-going mediation? - on what topics?

Do lawyers ever (often) initiate contact with you with regard to on-going mediation? - on what topics?

It has been suggested by some lawyers that they don't get much useful information from counsellors? What do you think?

Have you ever had lawyers present during mediation? If so, describe circumstances:

While mediation is in progress what else should be happening? For example, should lawyers continue to negotiate other issues or should the courts continue to conduct proceedings on other issues?

TERMINATION

Under what circumstances do find it necessary to terminate mediation?

COMPULSORY MEDIATION

Do you generally try to confirm that clients understand that mediation is voluntary? How and when do you do this?

Some people are in favour of adopting compulsory mediation. What do you think about this?

What, if anything do you do if clients ignore a court referral?

What, if anything do you do if clients say "my lawyer told me I could terminate after the first session"?

AGREEMENTS

What is the ideal form of agreement in your view?

How often is this ideal met?

Some people have said that counsellors "push" clients too hard to reach agreement; others say they don't push hard enough. What is your view?

Are some couples more amenable to mediation than others? What sorts?

Some lawyers have suggested that counsellors have a "joint custody bias." How would you respond?

What do you do if couples reach an agreement that you think is in some respects unsuitable or unworkable?

TRAINING

What sort of training ought mediators to have?

Do you sense any gaps in your own knowledge and training?

EFFECTS OF MEDIATION

Some people have suggested that mediation has desireable effects whether or not a couple reach agreement? Do you agree? What sort of effects?

GENERAL

Some judges have suggested that they need more information from counsellors on the "success" of the new system? How would you respond?

Can you suggest some ways in which the present system of mediation could be improved?

APPENDIX "E"

Methodology and Population Characteristics - Lawyer Interviews

METHODOLOGY

The names of 49 lawyers were drawn from the Manitoba Bar Association's mailing list for its Family Law Subsection augmented by names suggested by interviewees. Rural practitioners and lawyers known to the researchers not to have a domestic practice in excess of approximately 29% of their total volume were eliminated. Five of the 50 contacted indicated that they did less than 50% domestic law and they were not interviewed. Two were either unavailable or refused to participate. The results are therefore based on telephone interviews with a selected group of 42 Winnipeg Family Law practitioners. The resulting data cannot therefore be regarded as representing the opinion of all lawyers or even all members of the Family Bar in Winnipeg.

All of the interviews were conducted during May and June of 1986. In order to maintain consistency the same interviewer conducted all of the interviews. The procedure used was to make initial contact by telephone in order to schedule an appointment for a more extended telephone interview. In this manner we were able to conduct interviews for the most part without interruption and interviewees could be encouraged to be complete in their responses to open-ended questions.

We recognize that it may be unconventional to report percentage figures for small populations. We do so here just as we have done so elswhere in this report as an aid to the reader.

CHARACTERISTICS

Among those interviewed 27 are female and 15 are male. They were called to the bar between the years 1971 and 1985. Table 1 illustrates the year of call to the bar by sex.

TABLE 1 YEAR OF CALL TO THE BAR OF MANITOBA

	1971-1975	1976-1980	1980-1985
TOTAL			
Female 27	3	12	12
Male 15	7	4	4

Ten percent of the female lawyers were called to the bar between 1971 and 1975, forty-five percent between 1976 and 1980 and forty-five percent between 1980 and 1985. In contrast to this, approximately forty-five percent of the male lawyers were called to the bar between 1971 and 1975, twenty seven percent between 1971 and 1980 and between 1980 and 1985.
Because not all lawyers have practised continually since their Call, we also asked our respondents to report years of practise.

Table 2 indicates that the majority of the male family lawyers interviewed for this study have practised longer than their female counterparts. The data presented here are grouped for five year periods. About 43% of the total group has practised law five years or less. About 80% of the total has practiced ten years or less. These totals however mask identifiable differences by sex of the lawyer. Ninety-three percent of the female respondents have practiced ten years or less compared to about half of the male lawyers. About half of the female respondents have practised 5 years or less compared to about one-quarter of the male lawyers.

TABLE 2

SEX	YEARS OF PRACTICE			
	0 to 5 yrs	6 to 10 yrs	Over 10 yrs	Total
FEMALE	14	11	2	27
MALE	4	4	7	15
Total	18	15	9	42

Table 3 shows that slightly more than half of the lawyers interviewed (both males and females) report that they have a concentration of family law practise in excess of 70% of their total practise during the twelve-month period preceding the interview.

TABLE 3 PERCENTAGE OF DOMESTIC PRACTISE (PAST 12 MONTHS)

Percent	30 to 50	51 to 70	71 to 90	91 to 100	Totals
Female	6	6	8	7	27
Male	4	3	7	1	15
Totals	10	9	15	8	42

Table 4 indicates that neither the men nor the women lawyers among those interviewed characterize their clientele as either primarily husbands or primarily wives. About a quarter of the total number of respondents report that they act primarily for wives. Some lawyers and judges have suggested to us that when wives experience marital difficulties requiring a lawyer's assistance they will tend to seek out "specialists" while husbands are more likely, at least initially, to go to a lawyer with whom they are already familiar in other, usually commercial, contexts.

TABLE 4 CLIENTS FOR WHOM THEY USUALLY ACT

	PRIMARILY HUSBANDS	PRIMARILY WIVES	BOTH HUSBANDS AND WIVES
FEMALE	1	7	19
MALE	0	3	12
TOTAL	1	10	31

FIRM SIZE

It was suggested to us that twenty lawyers and more constitutes a "large firm" by Winnipeg standards. We found more female than male family lawyers practising in large firms by this definition. About 33% of the female lawyers practiced in a firm over twenty people. Approximately 13% of the male family lawyers practise in large firms.

INTERVIEW GUIDE

Interviews with lawyers were based on the following questions.

Biographical information

Male___ Female ___

Year of Call: 19__

Total years practiced since call ______

Approximate percentage of practice in the pas twelve months that is domestic _____%

Usually act for Wives____ Husbands____ Either____

Size of firm in which spent majority of years of practice

___Solo to 3
___4 to 9
___10 to 20
___over 20

Referral

Do you encourage clients to go to Family Conciliation for mediation counselling?

-Why or why not?

-At what stage in the proceedings?

-Do you ever refer to FCS for reconciliation (i.e. marriage) counselling?

Do you refer clients to private mediators?

-Why or why not?

-Under what circumstances?

-Which ones?

Are you satisfied with the present limitation of court-based mediation to issues of custody and access?

Do you ever encourage clients specifically not to attend for mediation counselling?

[Page 4 - Methodology and Population Characteristics - Lawyer Interviews]

-Under what circumstances?

-How do you make your opposition known?

__ In open court or chambers hearings

__ By suggesting the client merely "go through the motions"

Other:

Do you make any effort to "prepare" clients for mediation counselling?

-How?

Effects

Do you ever provide what might be called "counselling" (as opposed to legal advice) for your clients?

-On what issues?

-If so, has this task been reduced or made easier by the availability of Family Conciliation Services

Do you think that mediation should be compulsory as it is in some non- Canadian jurisdictions?

___ Yes ___ No

What do you believe is the Lawyer's role in the mediation counselling process once the referral has been made?

-are you able to play this role adequately or would you like to see changes in the system (to keep you better informed, etc.)

Does mediation counselling affect the lawyer-client relationship? How?

Does mediation reduce the level of hostility between the parties?

Does mediation usually change the outcome of a case?

Does mediation delay the progress of cases, speed them up, or have no effect?

Does mediation affect the number of billable hours charged to family law files?

-In what way?

-Does this have an effect on your total volume of family cases?

Do you feel that Mediation counsellors "pressure" clients into accepting any particular kinds of arrangements?

-What sorts?

Do you generally stop all court proceedings with regard to the case while mediation sessions are in progress?

Outcomes

What are the influences, in your perception, that determine whether or not a couple is able to reach agreement through mediation counselling?

Does the fact that a client is represented on a Legal Aid certificate have any influence on whether or not mediation is successful?

In your experience how conclusive are arrangements agreed to by clients in mediation? Are they subsequently changed by:

-counsel?

-judges?

-parties themselves?

Does the fact that a couple reach an agreement through mediation have any influence on whether or not they relitigate?

How effective is mediation counselling in serving the best interests of children? ...better, worse, or no different than cases where there is no mediation?

Does mediation counselling have any influence on the settlement of issues other than custody and access?

-what issues?

-what sort of influence?

Do you think that mediation counsellors should push clients harder to reach agreements than the court-based counsellors generally do?

Do you think that mediation operates to encourage pre-trial settlements even with regard to issues other than custody and access?

Do you think that mediation counselling, even if it is unsuccessful or only partially successful, operates to reduce the length and frequency of trials?

Do you generally find mediated agreements are satisfactory?

-if not, why not?

Do your clients generally find mediated agreements to be satisfactory?

-if not, why not?

How often have you encouraged a client to reject a mediated agreement?

-why? (Get specifics)

Do clients experience benefits from mediation counselling whether or not they reach full or partial agreement on custody or access?

-what sorts?

Is there any prejudice to clients from mediation counselling whether or not they reach full or partial agreements?

-what sorts?

What are your views regarding joint custody?

Do you have any views with regard to the effort by some judges and practitioners to avoid using terms such as "joint custody", "access" and other phraseology that is familiar to lawyers?

On a scale of 1 to 10 with 1 being the most conciliatory and 10 being the most litigious, how do you think that most family lawyers would characterize you approach to domestic practice?

1 2 3 4 5 6 7 8 9 10

Do you have any comments about mediation counselling or present court procedures with respect to counselling services that may assist us in getting a complete picture?

APPENDIX "F" - JUDGE INTERVIEWS

BIOGRAPHICAL INFORMATION

Male = 4 Female = 2

Year of Appointment to Court of Queen's Bench

1971 - 1
1983 - 3
1984 - 2

Two had prior appointments to Provincial Court (Family Division)

1 - Appointed full time in 1978
1 - Appointed part time in 1977

Practice prior to full-time judicial appointment (excluding articling years)
(includes administrative appointments requiring legal training)

Range is from 24 years at the top to 6 years (part-time) at the least

20 years and more	=	2
15 to 19 years	=	1
10 to 12 years	=	2
5 to 9 years	=	1

Median years of practice prior to QB appointment = 14.5 years

Approximate percentage of total practice in the five years prior to first full time judicial appointment that was "domestic"

Range is from 0% (former Deputy A-G) to 95% (both of the female justices)

0 to 5 percent	=	2
25 percent	=	1
80 percent	=	1
95 percent	=	2

[Page 1 - Judge Information and Interview Guide]

Usually acted for

Husbands = NIL Wives = 1 Either = 4
N/A = 1

All but one of the justices who had any domestic practice at all report that they acted for either husbands or wives. The single justice who reported acting mainly for wives indicated that the breakdown was about 70% wives and 30% husbands in a practice that was 95% domestic.

Size of Firm

Government Department	=	1
Solo to 3	=	1
4 to 9	=	2.5*
10 to 20	=	1
Over 20	=	.5*

* of 6 years part time practice exactly half in one size and half in the other

Justices, other than former civil servant, practiced mainly in small sized firms, i.e. from two to ten lawyers

INTERVIEW GUIDE - JUDGE INTERVIEWS

Biographical information

Male ___ Female ___

Year of Appointment: ...to QB 19__ ...to lower Court 19__

Total years practiced prior to first judicial appointment
______

Approximate percentage of practice in the five years prior to first judicial appointment that was domestic
_____%

Usually acted for Wives____ Husbands____
Either____

Size of firm in which spent majority of years of practice
___Solo to 3
___4 to 9
___10 to 20
___over 20

[Page 2 - Judge Information and Interview Guide]

Referral

Do you generally refer litigants to Family Conciliation Services for mediation counselling?
-What are the factors that influence you to make a referral or not to do so?
-Does the stage that the case has reached in the proceedings make a difference in your decision to refer?

Do you ever refer to FCS for reconciliation (i.e. marriage) counselling?
-Why or why not?

Do you ever suggest to litigants specifically that they not attend for mediation counselling?
-Under what circumstances?

Are you satisfied with the present limitation of court-based mediation to issues of custody and access?

Do you think that litigants ought to be encouraged to obtain mediation counselling for property and financial issues?
-if yes, what should be the qualifications of the mediator?

Effects

Do you think that mediation should be compulsory as it is in some non- Canadian jurisdictions?

___ Yes ___ No

What role do you think counsel should play in the mediation counselling process once the referral has been made?
- Do you ever make suggestions to counsel in that regard?

Does mediation counselling generally change the outcome of a case in your opinion?

Does mediation delay the progress of cases, speed them up, or have no effect?

Do you feel that court Mediation counsellors "pressure" clients into accepting any particular kinds of arrangements?
-What sorts?

Outcomes

What are the factors that in your opinion determine whether or not a couple is able to reach agreement through mediation counselling?

Does the fact that a couple reach an agreement through mediation have any influence on whether or not they relitigate?

[Page 3 - Judge Information and Interview Guide]

How effective is mediation counselling in serving the best interests of children? ...better, worse, or no different than cases where there is no mediation?

Does mediation counselling seem to you to have any influence on the settlement of issues other than custody and access?
- -what issues?
- -what sort of influence?

Do you think that mediation counsellors should push clients harder to reach agreements than the court-based counsellors generally do?

Do you think that mediation operates to encourage pre-trial settlements even with regard to issues other than custody and access?

Do you think that mediation counselling, even if it is unsuccessful or only partially successful, operates to reduce the length and frequency of trials?

How often have you found it necessary to reject a consent order?
-why? (Get specifics)

Is there any prejudice to litigants from mediation counselling whether or not they reach full or partial agreements?
-what sorts?

What are your views regarding joint custody?

Do you have any views with regard to the effort by some judges and lawyers to avoid using terms such as "joint custody", "access" and other phraseology that is familiar to lawyers?

APPENDIX "G"

CHARACTERISTICS OF "SAMPLE" POPULATIONS

The basic population was intercepted at the FCS office from November 1985 through April 1986 inclusive. 282 individuals identified by counsellors or by court referral as as potential subjects for mediation completed an initial questionnaire. The intention was to compare responses to items on the initial questionnaire at two additional points in time: at termination or conclusion of mediation and four months after the FCS file was closed.

Only 67 respondents completed Questionnaire #2. In large part completion problems were due to the fact that it was not always apparent to the counsellor at the last session that the session was in fact the terminal one. In addition, when it was apparent that there would be no more sessions, often emotions ran very high and clients were therefore unwilling to take the time to complete a questionnaire. We attempted then to mail the second questionnaire to clients. The return rate was low and for many we could not get a current address. We subsequently revised the follow up interview to include many of the items we had intended to include in Questionnaire #2. We have eliminated data from Questionnaire #2 from our analysis.

We attempted to locate and to interview by telephone all of the respondents to Questionnaire #1. Telephone contact was preceded by a letter. When we determined that the respondent's phone had not been disconnected or that they had moved without leaving a forwarding address, we made at least six attempts before deciding not to continue. A few refused. In all we interviewed 138 persons.

In addition to the data acquired directly from clients we examined the FCS records including intake records for a 24-month period, 1985 and 1986, and all of the files we could locate (262) corresponding to individuals intercepted by the device of Questionnaire #1.

We located and examined current court files corresponding to 93 individuals intercepted.

We also examined 169 "archival" court files, being all of the divorce petitions filed in calendar year 1983 in which custody and/or access were at issue.

Following are the population and subpopulation characteristics.

(Page 1 - Characteristics of "Sample" Populations)

GENDER

Questionnaire #1			Interview		
Males	138	(48.9%)	Males	63	(45.7%)
Females	144	(51.1%)	Females	75	(54.3%)
Total	282		Total	138	

AGE

Questionnaire #1		
Mean	33.133	years
Median	33	years
Mode	38	years
Range	18 to 56	years

OCCUPATION

Data on occupation are missing for 143 cases. Among the 139 cases where there is some indication of occupation in the file there is no consistent classification.

In 27 cases (9.6%) the files indicates that the respondent is unemployed. In 49 cases (17.4%) the respondent is indicated to be a professional or white collar worker. In 58 cases (20.6%) the respondent is categorized variably as blue collar, skilled, unskilled.

EDUCATION

Questionnaire #1	Frequency	Percentage
Less than Grade 12	29	10.3
Grade 12	35	12.4
Trade Secondary	9	3.2
Partial University	6	2.1
University degree	14	5.0
Not known	189	67.0
Total	282	100.0

RELATIONSHIP

(Page 2 - Characteristics of "Sample" Populations)

Questionnaire #1	Frequency	Percentage
Mother only	42	14.9
Father only	36	12.8
Both parents	202	71.6
Uncle/Niece	2	.7
Total	282	100.0

One parent = 78
Both parents = 101
Uncle/Niece = 1

Follow up Interviews Completed

	Frequency	Percentage
Mother only	17	12.3
Father only	16	11.6
Both parents	105	76.1
Total	138	100.0

(Page 3 - Characteristics of "Sample" Populations)